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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 27

SECRETARY OF AGRICULTURE, PETITIONER

v.

CENTRAL ROIG REFINING COMPANY AND WESTERN SUGAR REFINING COMPANY, RESPONDENTS; PORTO RICAN AMERICAN SUGAR REFINERY, INC., INTERVENOR; THE AMERICAN SUGAR REFINING COMPANY, ET AL., INTERVENORS; AND THE GOVERNMENT OF PUERTO RICO, INTERVENOR

No. 30

PORTO RICAN AMERICAN SUGAR REFINERY, INC., PETITIONER

v.

CENTRAL ROIG REFINING COMPANY AND WESTERN SUGAR REFINING COMPANY, RESPONDENTS

No. 32

THE GOVERNMENT OF PUERTO RICO, PETITIONER

v.

THE SECRETARY OF AGRICULTURE, PORTO RICAN AMERICAN SUGAR REFINERY, INC., THE AMERICAN SUGAR REFINING COMPANY, ET AL., CENTRAL ROIG REFINING COMPANY, AND WESTERN SUGAR REFINING COMPANY, RESPONDENTS

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE SECRETARY OF AGRICULTURE

OPINION BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit (R. 194-197) is reported

in 171 F. 2d 1016. The findings and order of the Secretary of Agriculture (Puerto Rico Sugar Order 18, R. 160-175) are reported in 13 F. R. 310-313.

JURISDICTION

The judgment of the Court of Appeals was entered on November 24, 1948 (R. 198). Petitions for writs of certiorari were filed on February 18, 1949, and February 21, 1949, and were granted on April 25, 1949 (R. 208). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254.

QUESTIONS PRESENTED

(1) Did the Secretary of Agriculture properly interpret and apply the statutory standards prescribed by the Sugar Act of 1948 when he allotted the direct-consumption portion of the general sugar quota for Puerto Rico that could be marketed in the continental United States in 1948?

(2) Does the statutory limitation on the portion of the general sugar quota for Puerto Rico that may be filled with direct-consumption sugar violate the due process clause of the Fifth Amendment to the Constitution?

STATUTE AND ORDER INVOLVED

The statute involved is the Sugar Act of 1948 (61 Stat. 922-933, 7 U. S. C., Supp. II, 1100-1160). The Secretary of Agriculture is required by the Act to determine in December of each year the

sugar consumption requirements of consumers in the continental United States for the following year, and to establish marketing quotas for the several areas that supply those requirements. The Act itself fixes the quotas for the domestic sugar-producing areas (which include two groups of states, and three territories and possessions) and for the Republic of the Philippines at figures totaling 5,250,000 short tons, raw value. The difference between that total and the estimated annual consumption requirements is assigned to other foreign areas, with Cuba getting 98.64 percent of it.

In addition to these general sugar quotas, section 207 of the Act (7 U. S. C. Supp. II, 1117) limits the portion of the marketing quota for each of the principal offshore areas (Hawaii, Puerto Rico, the Virgin Islands, the Republic of the Philippines, and Cuba) that may be filled with direct-consumption sugar. Direct-consumption sugar is sugar that is not to be further refined or otherwise improved in quality; i.e., usually refined sugar. The balance of the quota may be filled only with raw sugar, which is then refined by the refiners in the continental United States.

The sections of the Act immediately involved are section 207(b) (7 U. S. C., Supp. II, 1117(b)), which fixes the direct-consumption portion of the quota for Puerto Rico at 126,033 short tons, raw value, and section 205(a) (7 U. S. C., Supp. II, 1115(a)), which authorizes the Secretary to allot

any quota or proration thereof to the persons who market or import sugar from the area, and specifies the factors to be taken into consideration when making the allotment. Section 205(a) is not restricted in its application to the allotment of the quota for Puerto Rico. The standards specified in the section also govern the allotment of a quota for any other area. The sections are as follows:

> Sec. 207 (b). Not more than one hundred and twenty-six thousand and thirty-three short tons, raw value, of the quota for Puerto Rico for any calendar year may be filled by direct-consumption sugar.
>
> Sec. 205 (a). Whenever the Secretary finds that the allotment of any quota, or proration thereof, established for any area pursuant to the provisions of this Act, is necessary to assure an orderly and adequate flow of sugar or liquid sugar in the channels of interstate or foreign commerce, or to prevent disorderly marketing or importation of sugar or liquid sugar, or to maintain a continuous and stable supply of sugar or liquid sugar, or to afford all interested persons an equitable opportunity to market sugar or liquid sugar within any area's quota, after such hearing and upon such notice as he may by regulations prescribe, he shall make allotments of such quota or proration thereof by allotting to persons who market or import sugar or liquid sugar, for such periods as he may designate, the quantities of sugar or liquid sugar which each such

person may market in continental United States, the Territory of Hawaii, or Puerto Rico, or may import or bring into continental United States, for consumption therein. Allotments shall be made in such manner and in such amounts as to provide a fair, efficient, and equitable distribution of such quota or proration thereof, by taking into consideration the processings of sugar or liquid sugar from sugar beets or sugarcane to which proportionate shares, determined pursuant to the provisions of subsection (b) of section 302, pertained, the past marketings or importations of each such person; and the ability of such person to market or import that portion of such quota or proration thereof allotted to him. The Secretary may also, upon such hearing and notice as he may by regulations prescribe, revise or amend any such allotment upon the same basis as the initial allotment was made.

No sugar from an area may be imported into or marketed in the continental United States in excess of the quota for the area or in excess of any allotment of a quota or part thereof (Sec. 209, 7 U. S. C., Supp. II, 1119).

The administrative order involved is Puerto Rico Sugar Order 18 (13 F. R. 310-313), which is set forth in full in the record (R. 160-175). It allots the direct-consumption portion of the 1948 sugar quota for Puerto Rico.

THE SUGAR INDUSTRY

The Sugar Act of 1948 and its predecessors, the Sugar Act of 1937 and the Jones-Costigan Act of 1934, followed a period of high protective tariffs. All were designed to protect the American sugar industry from the effects of a world surplus of sugar that has existed for many years. The quotas imposed by the Sugar Act are an attempt to divide equitably among all areas of supply, both domestic and foreign, the market for sugar in the United States, and at the same time to establish prices at a level that is fair to the sugar industry and to consumers.

There are five domestic sugar-producing areas: two in the continental United States and one in each of the territories of Hawaii, Puerto Rico, and the Virgin Islands. The principal foreign sugar-producing areas are Cuba and the Republic of the Philippines; only a small quantity of sugar is imported from other foreign countries.

All the beet sugar sold in this country is grown and processed in the domestic beet sugar area, which is in the western part of the country. The sugar beets are converted into sugar by a continuous process, and the quota for the area is an effective limitation upon both the producers and the processors of the sugar beets. In contrast, most of the cane sugar sold in this country is produced in offshore areas, including the three domestic areas in the territories; only a very small proportion of it comes from the mainland cane sugar area, which

consists of Florida and Louisiana. Moreover, sugarcane is converted into refined sugar in two distinct and usually separate processes. The cane is processed into raw sugar by raw sugar mills located near the place of production, and the bulk of the raw sugar is later refined by refiners, some of whom are located in the offshore areas, but many of whom are located on the mainland. The mainland refiners obtain most of their supplies of raw sugar from offshore areas and refine it here. The refiners in the southern part of the country supplement those supplies with the raw sugar produced in the mainland cane sugar area.

A quota system, limiting in the interest of American producers the total quantity of sugar that may be marketed from various areas of supply, necessarily limits the raw sugar supplies available to refiners located on the mainland. To the extent the raw sugar is refined before it is marketed in the continental United States the problem of the mainland refiners is intensified. Refiners in offshore areas customarily market sugar at lower prices than the mainland refiners, and unless restricted by the quota system they would be able to pre-empt the major portion of the restricted raw sugar supplies. In order to meet the problem thus created, the Sugar Act limits the portions of the quotas for the offshore areas that may be filled with sugar that is not to be further refined on the mainland, called direct-consumption sugar, thus insuring the mainland refiners a portion of the raw

sugar supply subject to the general sugar quota limitations.

In order to implement the marketing quota provisions of the Act, provision is made for limiting the production of sugar in the domestic areas (both continental and offshore) to the quantities necessary to fill the respective marketing quotas, plus a normal carry-over. The limitation is accomplished by restricting each farm's marketings to its proportionate share of such quantities. This limitation is effective because it must be complied with in order to receive the Sugar Act payments authorized by Title III. The processings of sugar from sugarcane to which such proportionate shares pertained is one of the standards to be considered by the Secretary when allotting any quota among the persons who market sugar from the area.

In Puerto Rico, the refiners who market 90 percent of the sugar refined in the islands do not themselves process raw sugar from sugarcane. They buy their supplies of raw sugar from raw sugar mills. Some of the mills are "affiliated" with particular refiners in the sense that they are owned by the same interests, but the raw mills and the refiners are separate legal entities.

STATEMENT

Puerto Rico Sugar Order 18 was issued by the Secretary after a public hearing. The Secretary first determined that the allotment was necessary

in order to prevent disorderly marketing and to afford all interested persons an equitable opportunity to market, and he gave notice of a public hearing to receive evidence to enable him to make a fair, efficient, and equitable distribution of the quota (R. 161-162). At the hearing, the Department of Agriculture proposed an allotment formula for purposes of discussion, and evidence was received regarding that and other proposals (R. 162-168, 2-159). The respondents actively participated in the hearing. Upon the basis of the hearing record, the Secretary formulated and issued his decision and order (R. 160-175).

The decision contains findings regarding the need for making the allotment (R. 171-174), and a summary of the evidence bearing upon the manner in which the allotment should be made (R. 162-168). It also contains a detailed discussion of the three statutory standards that must be considered when making an allotment, and an explanation of the reasons for the Secretary's choice of the method of allotment used (R. 168-171).

With respect to the standard of "past marketings," the Secretary recognized that "ordinarily the most recent period of marketings recommends itself as reasonable" (R. 169). As a result of the war, however, the period from 1942 through October 1947 was one "of great abnormality"; during this period there was governmental control of both imports and exports of sugar and many difficulties were experienced in transportation, storage, and

the obtaining of essential materials which affected the refiners in varying degrees (R. 169-170). In view of these facts, the Secretary concluded "that the past six years are not representative years for past marketings and should not be used," and that the prewar years, 1935-1941, inclusive, were to be regarded as representative. For the benefit of refiners who did not operate in all those seven years, the Secretary found that "the use of each refiner's average of the highest five years of marketings during such seven-year period will afford a fair and equitable measure of past marketings" (R. 170).

A similar analysis was made in the application of the standard of "ability to market." The Secretary there, too, recognized that "under normal circumstances the selection of a recent year to measure ability would seem reasonable," but that the abnormality of the preceding six years made their use as the sole measure of the ability of all Puerto Rican refineries unfair and inaccurate. Accordingly, the Secretary thought it fair to use the highest of any war or prewar year since 1935 as a measure of the present marketing ability of each refiner, subject to using present plant capacity as a check on current ability to market (R. 170-171).

The Secretary considered the standard of "processings of sugar * * * from * * * sugarcane to which proportionate shares * * * pertained," and found it not applicable to the allotment of the

direct-consumption portion of Puerto Rican sugar quota, because it referred to processings of raw sugar from sugarcane and not to processings of refined sugar from raw sugar, and the three largest Puerto Rican refiners (which are parties in the instant case) do not process raw sugar from sugarcane (R. 168).

In conclusion the Secretary prescribed the formula in making the allotment based upon the foregoing, as follows (R. 174):

> I hereby determine and conclude * * * that in order to make a fair, efficient, and equitable distribution of the direct-consumption portion of such quota, as required by section 205(a) of the act, allotments should be made by giving equal weight to (a) past marketings, measured by the average of the highest five years of such marketings by each refiner during the period 1935-1941, inclusive, and (b) ability to market, measured by the highest single year's marketings during the period 1935-1947, inclusive * * *.

Respondents Central Roig Refining Company and Western Sugar Refining Company, two of the three largest refiners in Puerto Rico, appealed from the order of the Secretary to the United States Court of Appeals for the District of Columbia Circuit in accordance with the procedure specified in section 205 of the Act. They challenged the validity of the order on two grounds. They con-

tended (1) that the order itself is invalid under the terms of section 205(a) of the Act because the Secretary erroneously interpreted and arbitrarily and capriciously applied the statutory standards required to be considered when making allotments, and (2) that the statutory limitation in section 207(b) on the portion of the general Puerto Rican sugar quota that may be marketed in the continental United States in refined form is grossly discriminatory against Puerto Rican refiners and is, therefore, invalid under the due process clause of the Fifth Amendment.

Porto Rican American Sugar Refinery, Inc., the petitioner in No. 30 and the largest of the Puerto Rican refiners, intervened for the purpose of defending the Secretary's order against the attack on statutory grounds.[1] The American Sugar Refining Company and other continental refiners of raw cane sugar intervened for the purpose of defending the order against the attack on constitutional grounds. The Government of Puerto Rico, the petitioner in No. 32, intervened for the purpose of attacking the constitutionality of the statutory restriction.

The Court of Appeals for the District of Columbia Circuit reversed the Secretary's order on the basis of the court's conclusion that, as a matter of law, none of the three statutory standards had been

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[1] The remaining three refiners that received small allotments under the Secretary's order did not become parties to the action.

properly interpreted and applied.[2] The court refrained from deciding whether section 207(b), which imposes the limitation upon the portion of the Puerto Rican sugar quota that may be filled with direct-consumption sugar, is authorized by the Constitution. Judge Edgerton dissented from this aspect of the court's opinion and expressed the view that the constitutional question should have been decided.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

(1) In holding, as a matter of law, that it is doubtful whether the statutory standard "past marketings" includes marketings for more than the last half dozen years, and that marketings during the six wartime years 1942-1947 may not be excluded from consideration regardless of the abnormal conditions that prevailed;

(2) In holding, as a matter of law, that an allottee's ability to market the portion of the quota allotted to him may not be measured by actual per-

---

[2] The court's decision is based upon its interpretation of the statutory standards themselves, and not upon a review of the record to determine whether the Secretary's judgment on the facts was arbitrarily or capriciously exercised. The court characterized the order as "very favorable" to one of the intervenors (R. 196), but the characterization is unjustified because the court did not purport to review the evidence to determine whether the Secretary made a fair and equitable distribution of the quota. Without such review it is impossible to determine whether the order is favorable or unfavorable to anyone.

formance more remote than performance during the preceding year;

(3) In holding, as a matter of law, that the statutory standard "processings of sugar from sugarcane to which proportionate shares pertained" must be given some weight, notwithstanding the conclusion of the Secretary that the standard is inapplicable to the facts involved, and that in the interest of fairness and equity (which is the controlling statutory guide) the standard should be given a zero weighting; and

(4) In reversing the order of the Secretary.

SUMMARY OF ARGUMENT

I.

A. The Act does not require the Secretary to restrict his consideration of past marketings to marketings during the preceding six years, and it does not require him to give any weight to marketings during a period when abnormal conditions prevailed. The statutory direction to consider past marketings is related to no particular period of time, and there is nothing in the Act that warrants reading into it a six-year limitation. When Congress has intended that marketings or production for a fixed period of time be considered, it has said so; and the failure to include a limitation in the Sugar Act indicates that no limitation was intended. Furthermore, the Act does not require the Secretary, when considering past marketings, to

give weight to the most recent marketings, though they are subject to abnormal conditions, merely because they are the most recent. The purpose of the Secretary's consideration is to reach a fair and equitable result. When the most recent marketings occur during an abnormal period and in the judgment of the Secretary would not provide the basis for an equitable allotment, he may properly consider those marketings as entitled to no weight and base his allotment upon marketings during a more normal period. The discretionary authority to choose the period of past marketings to be used as a basis for allotment necessarily includes the authority to exclude, after due consideration, abnormal periods. The quotas subject to allotment were themselves fixed by Congress with reference to marketings during a prewar period. Marketings during the period 1942-47 were sufficiently abnormal, due to various wartime dislocations, to warrant the Secretary in giving them no weight because of their unrepresentative nature. His use of prewar marketing figures as a basis for making the allotment involved a matter of judgment, and his judgment was not arbitrary or capricious.

B. The Act does not preclude the Secretary from measuring an allottee's ability to market the portion of the quota allotted to him by the allottee's actual performance during one of several preceding years, provided such performance is within the

limits of the present plant capacity of the allottee. The ability standard is a difficult one to apply because there is no easy way to measure ability, and each of the possible measures is subject to some objection. Actual performance in the past is demonstrated ability, and under many circumstances it is a more adequate indication of present ability than any other measure that is available to the Secretary.

While performance during a recent year would ordinarily be used for this purpose, the most recent year is not as a matter of statutory construction the only year that may be considered. The statutory standard is ability to market. The reasonableness of the performance period chosen to measure ability depends upon the circumstances and requires the exercise of an informed judgment by the Secretary. Frequently, performance during any one year is not an adequate measure of ability for all allottees. In order to take into account fluctuations due to unusual circumstances, performance during a longer period must be considered. The Secretary measured the ability of each allottee by the highest performance of the allottee during any one of the preceding 13 years, provided such performance was within the limits of its present plant capacity. His action was not arbitrary or capricious. Wartime controls unrelated to the Sugar Act or to present marketing conditions made performance during the preceding few years

an impractical mandatory measure of ability for all refiners. The measure used by the Secretary has the merit of recognizing the best demonstrated ability of each refiner during the entire period restrictive sugar legislation has been in effect, and does not penalize any refiner for interruptions caused by unusual circumstances such as strikes, fires, etc., and particularly the war. At the same time, it recognizes ability demonstrated by any refiner despite such difficulties.

C. The Act does not require the Secretary to give some weight to processings of sugar from sugarcane to which proportionate shares pertained when the Secretary considers the standard and determines that it is inapplicable under the particular circumstances involved. The statutory requirement is that the Secretary consider the standard. He is not required to give any maximum or minimum weight to it, and if the facts warrant giving no weight to the standard the Act does not preclude such action. As a matter of fact, the Act contemplates allotments under some circumstances—as, for instance, in the case of sugar produced in Cuba—where it would be impossible to give any weight to the standard. The Secretary gave no weight to it in the present case because only three allottees, who market less than 10 percent of the direct-consumption sugar, processed any sugar from proportionate-share sugarcane. The Secretary concluded that an allotment based upon a standard of such

limited applicability would not result in a fair and equitable distribution. That judgment was not arbitrary or capricious, and it did not affect adversely the respondents in this action. The respondents processed no sugar from proportionate-share sugarcane and would have received no benefit from the assignment of some weight to the standard.

The Secretary did not base his allotment upon a restoration of prewar competitive relationships. Any consideration of past marketings necessarily reflects the competitive relationships that existed during the period considered, but a prewar period was not selected as a measure of past marketings for that reason. The selection was amply justified because of the economic dislocations caused by the war. Moreover, inasmuch as ability to market was measured by each refiner's highest marketings during a period of years, and the highest marketings for all refiners did not occur in the same year, the ability factor does not reflect competitive relationships at any one time.

II.

The statutory limitation on the portion of the general sugar quota for Puerto Rico that may be filled with direct-consumption sugar does not violate the due process clause of the Fifth Amendment.

Section 207 of the Act limits the portion of the general sugar quota for Puerto Rico and for each

of the other offshore areas that may be marketed in the continental United States in the form of direct-consumption sugar. The purpose and the effect of the limitation are to distribute among the mainland refiners and the offshore refiners the opportunity to refine the limited amount of sugar permitted to be marketed under the general quotas. The refiners in the offshore areas may refine and market the portion of the offshore quotas specified in the Act, and the mainland refiners may refine and market the balance of the cane sugar permitted to be marketed under the quota program. The limitation is a part of an integrated system governing the marketing of all sugar. The system is designed to maintain the domestic sugar industry, including the mainland and offshore refiners, while at the same time protecting the interests of consumers.

The statutory limitation is within the plenary power of Congress to legislate for the territories and to regulate commerce between a territory and a state. Puerto Rico is an unincorporated territory of the United States over which Congress has full sovereign power. In the exercise of that power, Congress may limit or prohibit the amount or kind of goods that may be imported into the states from a territory. The exercise of the power to restrict imports from a territory by means of tax legislation has been sustained. The power to restrict imports directly by means of regulatory legislation is equally clear. It is immaterial that

the purpose or the effect of the legislation is to benefit or to grant a preference to the inhabitants of one or the other area. Congress may balance the interests of the two groups and legislate according to its concept of the welfare of the entire people. The statutory limitation in the Sugar Act is closely analogous to a protective tariff for the benefit of the mainland refiners, and the validity of such protective legislation is settled.

The statutory restriction is not discriminatory in the Constitutional sense. Puerto Rico is allowed to market direct-consumption sugar in an amount equal to the largest quantity marketed before the legislation was enacted. Such sugar is available for refining by Puerto Rican refiners. The balance of the quota must be marketed in raw form and thereby made available for refining on the mainland. That is a pattern of marketing that prevailed before sugar legislation was first enacted, and the Sugar Act merely continues it. The challenge to its validity is in reality directed to the wisdom of the policy rather than to the power of Congress to enact the legislation.

ARGUMENT

I. THE COURT OF APPEALS HAS MISCONSTRUED THE STATUTORY STANDARDS GOVERNING THE ALLOTMENTS OF QUOTAS. THE STANDARDS WERE PROPERLY INTERPRETED AND APPLIED BY THE SECRETARY.

The allotment by the Secretary of a marketing quota involves the performance of a function that is discretionary in nature. Congress itself has

fixed the general sugar quotas for each producing area and has specified the portion of each general quota that may be filled with direct-consumption sugar. However, the allotment of a quota among the persons who market or import sugar from an area must be made by the Secretary in accordance with delegated legislative authority that requires the exercise of broad discretion.

The controlling statutory guide is that an allotment shall be made "in such manner and in such amounts as to provide a fair, efficient, and equitable distribution" of the quota. The Act directs the Secretary to reach that result "by taking into consideration" three specific standards: (1) past marketings; (2) ability to market; and (3) processings of sugar from sugarcane to which proportionate shares pertained. However, the Act prescribes neither the weight to be attached to each standard nor the particular period of time to which the standard should be related. These factors must be determined by the Secretary in the exercise of his informed judgment in a manner that will result in a fair, efficient, and equitable distribution of the quota, which is the controlling statutory guide.

The fairness and equitableness of a distribution of a quota does not involve merely the application of a mathematical formula. There is no one plan of distribution that can be said to be the only fair one to the exclusion of all others. Alternative plans have different merits, and the selection of one of

several alternatives by the Secretary requires the exercise of judgment. Inasmuch as that judgment is essentially administrative in nature, the courts will not substitute their judgment for his judgment. The Secretary's judgment should be sustained unless no reasonable person could believe that it comported with the statutory test.

A. THE ACT DOES NOT REQUIRE THE SECRETARY TO RESTRICT HIS CONSIDERATION OF "PAST MARKETINGS" TO MARKETINGS DURING THE PRECEDING SIX YEARS, AND IT DOES NOT REQUIRE HIM TO GIVE WEIGHT TO MARKETINGS DURING A PERIOD WHEN ABNORMAL CONDITIONS PREVAILED. THE SECRETARY'S CONSIDERATION OF PAST MARKETINGS WHEN MAKING THE ALLOTMENT UNDER REVIEW WAS NOT ARBITRARY OR CAPRICIOUS.

The Act directs the Secretary to make allotments that are fair, efficient, and equitable by taking into consideration, among other things, the past marketings of prospective allottees. The direction is related to no particular period of time.

The Secretary recognized in his order that under normal circumstances marketings during the most recent period should be considered, but he concluded that he could not give weight to such marketings in the present case because the abnormal marketing conditions that prevailed during the preceding war years, 1942-47, made them an inappropriate base for a fair and equitable allotment. He therefore determined that the allotment should be based upon marketings during a prewar period,

which was the only alternative available. He chose the period 1935-41. However, in recognition of the fact that some of the refiners did not operate during all those years, he measured the past marketings of each refiner by the average of its highest marketings for any five of the seven years (R. 170).

The court below held that in excluding (i.e., in giving no weight to) marketings during the war years the Secretary failed to comply with the Act; that the prewar marketings considered by him were no measure of past marketings; and that it is doubtful whether the Act permits a consideration of marketings for more than the preceding half-dozen years. Upon the basis of that interpretation of the Act and without considering the facts in the record bearing upon the reasonableness of the Secretary's action, the court below concluded that the Secretary's order was invalid.

The Act is not properly subject to that interpretation. The Court of Appeals improperly read into the Act a six-year limitation on the period of past marketings that may be considered by the Secretary. No fixed period is prescribed in the Act, and the absence of a statutory limitation leaves the period for determination by the Secretary. In other quota legislation, when Congress has intended that marketings for a fixed period be considered it has clearly said so.[3] The failure to

[3] In the Agricultural Adjustment Act of 1938, 52 Stat. 31, 7 U. S. C. 1281, Congress provided that the national marketing quota for tobacco shall be apportioned among the states

say so in this Act indicates an intention to impose no fixed limitation.

The report of the House Committee on Agriculture[4] with respect to the language of section 302(b) of the Act is a persuasive indication of that intention. Section 302(b) relates to the establishment of individual farm allotments, called proportionate shares (that is, each farm's proportionate share of the sugarcane required to produce the quantity of sugar needed to fill the quota). Farm allotments are based in part upon the past production of each farm. The similarity of the problem of establishing allotments for farms upon the basis of past production and the problem of establishing allotments for processors upon the basis of past marketings makes the language of the Committee significant. The Committee said:

> In view of the differences in conditions of production obtaining in the various sugar-producing areas, the committee has not attempted to specify the exact manner in which the Secretary shall use production history. It is the

on the basis of the total production of tobacco in each state during the five years immediately preceding the year in which the quota is proclaimed (section 313(a), 7 U. S. C. 1313(a)). Similar provision was made for the apportionment of marketing quotas at the state or county level for corn, wheat, cotton, rice, and peanuts (section 329(a), 7 U. S. C. 1329(a); section 334(a), (b), 7 U. S. C. 1334 (a)(b); section 344 (a)(c), 7 U. S. C. 1344 (a)(c); section 353(a), 7 U. S. C. 1353(a); section 358(c), 7 U. S. C. 1358(c)). In contrast, the act requires some allotments at the farm level to be based in part on past marketings, but the period to be considered is not specified (section 313(b), 7 U. S. C. 1313(b); section 353(b), 7 U. S. C. 1353(b); section 358(d), 7 U. S. C. 1358(d)).

[4] H. Rep. No. 796, 80th Cong., 1st Sess., p. 8.

> judgment of the committee that considerable discretion should be left to the Secretary to deal with the varied and changing conditions in the various producing areas, in order to establish fair and equitable proportionate shares for farms in such areas.

It is also significant that none of the parties to this action has contended that the Secretary is limited by the Act to a consideration of marketings during the preceding six-year period. At the administrative hearing that preceded the issuance of the Secretary's order, the respondents urged the Secretary to consider past marketings during the preceding ten-year period (R. 45, 120).

It is worth noting that when enacting the Sugar Act of 1948 Congress fixed the general quotas for the domestic sugar-producing areas at figures that bore no close relationship to marketings during the preceding few years, which were war years, but that bore a close relationship to marketings during the more remote period 1937-41. The figures are tabulated below.[5] In only one area did marketings during any war year exceed the quota adopted by Congress, but in three of the areas marketings dur- a prewar year exceeded the quotas adopted.[6] Fur-

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	Domestic Beet Area	Mainland Cane Area	Hawaii	Puerto Rico
	Short tons, Raw value			
[5] 1942-46 average marketings	1,300,500	448,500	758,500	846,000
1937-41 average marketings	1,901,000	469,000	940,000	929,000
1948 Sugar Act quota	1,800,000	500,000	1,052,000	910,000
[6] Highest year of marketings, 1942-46	1,702,500	514,500	865,500	902,000
Highest year of marketings, 1937-41	1,952,000	586,500	985,000	1,126,000

(The data in this and the preceding footnote are from reports obtained by the Department of Agriculture in the administration of Public Resolution 109, 74th Congress, and the Sugar Act of 1937.)

thermore, the 126,033 ton limitation on the direct-consumption portion of the sugar quota for Puerto Rico that is involved in this action is derived directly from the marketings of such sugar in 1933. In the Jones-Costigan Act of 1934, 48 Stat. 670, 7 U. S. C. 608a, 609, 611, the limitation was stated in terms of the largest quantity of direct-consumption sugar shipped from Puerto Rico to the United States during the preceding three years, 1931-33. That quantity was computed at 126,033 short tons, raw value,[7] and the figure was incorporated in both the Sugar Act of 1937 and the Sugar Act of 1948. Congress could hardly have intended to require the Secretary to restrict his consideration of past marketings to the preceding six years in the allotment of quotas when the quotas themselves are related to marketings during an earlier period.

In addition to a six-year limitation on the period of past marketings that may be considered by the Secretary, the court below also improperly read into the Act a prohibition against the Secretary excluding recent periods when abnormal conditions prevail. No such requirement is contained in the Act, and the court's conclusion is inconsistent with the specific statutory direction that the Secretary consider past marketings in a manner that will result in a fair and equitable distribution.

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[7] General Sugar Quota Regulations, Series 1, p. 4, June 9, 1934; General Sugar Quota Regulations, Series 2, Revision 1, p. 4, August 17, 1935.

Significantly, in other legislation involving the allotment of quotas for agricultural products, the Secretary is required when considering past marketings and past production to make due allowances for abnormal weather conditions.[8] The general and unrestricted language of the Sugar Act should not be construed to preclude the Secretary when allotting sugar quotas from making similar allowances, whether the abnormal conditions are due to weather or to war.

War is only one of the abnormal conditions that may make it impractical to give any substantial weight to marketings during a particular period. Abnormal weather conditions might equally well cause the Secretary to discount or to disregard marketings during a particular period in order to make a fair and equitable distribution of a quota. Weather is an important factor in the production and marketing of sugar, and when unusual weather hazards affect different allottees in greatly differing degrees a proper allowance for that fact may be necessary in order to allot a quota fairly.

In Puerto Rico the years 1942-47 were abnormal ones from the standpoint of weather, and although the Secretary found it unnecessary to explore that factor because of his conclusion regarding wartime dislocations, the facts with respect to weather illustrate the necessity for a construction of the statute

[8] Agricultural Adjustment Act of 1938, 52 Stat. 31, 7 U. S. C. 1281, sections 313, 329, 334, 344, 353, 358.

that will permit the Secretary to make proper allowances for abnormal marketing periods.

A severe drought in 1943-44[9] decreased the production of sugar in the islands by more than 30 percent from the previous year. The drought was of varying degrees of severity and some of the mills were affected more severely than others. The decrease in production by mills ranged from 8 percent to 57 percent. The change in the relative positions of the mills caused by this abnormal condition is emphasized by the fact that the production that year for about half the mills was either the highest or the lowest percentage of any crop produced during the eleven-year period 1938-49. The figures are tabulated in Appendices A, B, and C.

Rainfall was also below normal in the years 1946 and 1947, but the effects of the subnormal rainfall were not uniform throughout the island. In the north, east, and west parts of the island rainfall normally is high and sometimes is excessive. In contrast, the south part of the island is an area of comparatively light rainfall; its long time average rainfall is little more than half that of the other three parts of the island. The comparative figures are tabulated in Appendix D. During the war, shortages of fertilizers and other supplies required for production affected both total production in the

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[9] Climatological Data—West Indies and Caribbean Service, published by the United States Department of Commerce, Weather Bureau, Vol. XXIII, Nos. 9-12, September-December 1943; Vol. XXIV, Nos. 1-5, January-May 1944.

island and relative production in the various areas. At the close of the war when supplies of fertilizers became more adequate, the drought conditions prevented production in the southern area from responding to the extent that it did in the other areas. Accordingly, relative production in the south part of the island fell progressively, reaching the lowest point in 1947. The data are tabulated in Appendix E.

The Court of Appeals' restrictive interpretation of the "past marketings" standard is particularly unfortunate when applied to this period. By precluding the Secretary from making proper allowances for marketings during this abnormal period, the lower court would require the selection of the lowest average marketings for the south part of the island that it has had in recent times. Moreover, by requiring the use of 1947 marketings as a measure of ability to market in 1948 (which is the subject discussed in the next point in this brief), the lower court would require the selection of the year in which the south part of the island produced the lowest percentage of the total Puerto Rican crop it produced in the entire period since 1930.

As the lower court's decision, if not corrected, will govern the allotments of quotas in other areas,[10] the serious consequences that could result from its restrictive interpretation should be noted.

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[10] Section 202 of the Act. The other areas are the domestic beet sugar area, the mainland cane sugar area, Hawaii, Virgin Islands, Republic of the Philippines, and Cuba.

In the mainland cane area, a severe freeze at the beginning of the 1934 harvesting season[11] resulted in a 31.7 percent decrease in sugar production in Florida but did not affect production in Louisiana. The converse situation prevailed in 1940, when a prolonged freeze[12] resulted in a 45.9 percent decrease in sugar production in Louisiana but did not affect production in Florida. The figures are tabulated in Appendix H. The mandatory use of a period of past marketings that arbitrarily included either of those years would have resulted in serious inequities among the allottees in the area. In order to make a fair and equitable allotment, the Secretary must have the authority to make proper allowances for such abnormal conditions.

The droughts and dust storms that occurred throughout a large part of the western continental United States during 1934 and 1936 affected crop production to such an extent that a national problem was presented. Congress was well acquainted with those facts when it enacted the Sugar Act of 1937 and the Sugar Act of 1948. It is most improbable that Congress intended to require the Secretary when making allotments in 1937 to use the 1934 and 1936 drought years in measuring past marketings, or to use any years when similar con-

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[11] Climatological Data—Florida Section, published by the United States Department of Commerce, Weather Bureau, Vol. XXXVIII, December 1934.

[12] Climatological Data—Louisiana Section, published by the United States Department of Commerce, Weather Bureau, Vol. XLV, No. 13, 1940.

ditions prevail. It is even more improbable that Congress would have required the Secretary to use production or marketings in a single one of such years, or in a similar year in the future, as a measure of ability to market. Yet, that is the result compelled by the rule of construction adopted by the lower court.

Many instances could be adduced in which a year or particular period of years furnishes no adequate index to either past or probable future production or marketings.[13]

Unusual weather conditions are only one of the abnormal situations that must be appraised by the Secretary when considering "past marketings" of prospective allottees. Plant diseases are another.[14]

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[13] For example, the State of Michigan produced an average of 128,000 short tons of sugar for the years 1920 to 1925, inclusive. Then production declined to as low as 57,000 tons in 1929 and did not fully recover until 1932. From 1932 to 1942, production exceeded the earlier level, averaging 147,000 tons although in 1937 it dropped to 79,000 tons. See Appendix F.

Similarly, the State of Louisiana experienced production difficulties during the 1920's. For the years 1909 to 1922 the State of Louisiana had an average production of 261,000 short tons of sugar. Production then decreased drastically, to as low as 48,000 tons in 1926. From 1929 through 1948 production and marketings of sugar for the State of Louisiana averaged 322,000 tons, but ranged from 160,000 in 1931 to 491,000 in 1938, and dropped from the latter figure down to 235,000 in 1940. See Appendix G.

[14] Hearing before a Subcommittee of the Committee on Agriculture, House of Representatives, 79th Cong., 1st Sess., on Investigation of Diseases Affecting Sugar Production, October 29 and 31, 1945, Serial F, p. 18, "Research on Sugar Plants and Some Practical Adaptations," excerpts from an address by E. W. Brandes, Head Pathologist in Charge, Division of Sugar Plant Investigations, Bureau of Plant Industry,

War, like weather and disease, is still another abnormal condition beyond the control of individual farmers, and its effects upon production and marketing may be the most serious of the three. The Philippines are a dramatic example. The production of sugar declined from 1,148,000 tons in 1940 to 75,000 tons in 1944, and in 1947 production was still less than half the prewar figure.[15] Moreover, during the period of Japanese occupation of the islands there were no shipments of sugar to the continental United States, and since the liberation of the islands the shipments of sugar have been far below normal. If the Philippine quota were allotted in accordance with the provisions of the Act,

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Soils, and Agricultural Engineering, Agricultural Research Administration, United States Department of Agriculture, before the second general meeting of the American Society of Sugar Beet Technologists, Denver, Colorado, on January 5, 1940:

"In comparison with many other sugar-producing areas, the United States has made much progress in the improvement of the sugar plants during the past 20 years. In that period there has been a series of interruptions in growth of the several sugar industries, in the main resulting from natural causes adversely affecting the plants themselves.

"These natural causes, chiefly plant diseases, more than any other factors have threatened the continued existence of the industries. Their impact on the industries and their effects on growth have varied in duration and degree and have been different in character. The interruptions in productivity of our sugar industries during the past 20 years were characterized, for example, by practical collapse in Louisiana and the South, violent and unpredictable annual fluctuations of output in the western beet areas, and curtailment in Puerto Rico lesser in proportion but equivalent in amount to that in Louisiana."

[15] The World Sugar Situation, September 1948, p. 38, published by the Bureau of Agricultural Economics, United States Department of Agriculture.

the "past marketings" standard would of necessity have to be applied to a prewar period.

When considering past marketings, the authority of the Secretary to take into account the abnormalities created by war is not different in principle from his authority to take into account the abnormalities created by natural hazards. The prewar marketings considered by the Secretary were past marketings. Their use and the exclusion of the war years as a basis for the allotment was not a failure "to comply with the Act," as the court below said it was. The decision was an exercise of the discretion granted by Congress to choose the years to be considered. The only question is whether the Secretary had a rational basis for his action.

The Secretary's reasons for giving no weight to marketings during the immediately preceding war years were impelling ones. The period was one of great abnormality. The wartime dislocations materially interfered with each refiner's control over its own marketings, and the marketings during that period consequently did not reflect the normal operation of the companies. The disruptive factors, as set forth in the Secretary's order and in the record, may be summarized as follows:

1. For the years 1944-1947, the Commodity Credit Corporation, an agency within the Department of Agriculture, purchased from the raw sugar mills in Puerto Rico the entire available supply of raw sugar, except the amount needed to supply local needs. Com-

modity Credit Corporation then determined the percentage of the total supply of raw sugar that could be refined in Puerto Rico for consumption in the continental United States. The determination was governed by wartime considerations and not by Title II of the Sugar Act of 1937, which was suspended. (R. 109.)[16] In 1944, 1945, and 1946, this percentage of the production of each raw sugar mill was released by Commodity Credit Corporation to the mill, and each mill was free to sell the released raw sugar to any refiner. The refiners, who customarily purchased and refined the entire output of a few mills, were thereby prevented from buying all their raw sugar from their usual sources of supply, and they had to compete for sugar from many different mills. The operation of the normal competitive system was thus materially affected. (R. 32-34, 67.)

2. In 1947, Commodity Credit Corporation specifically limited through its control of the raw sugar supply the amount of refined sugar each Puerto Rican refiner could send to the continental United States. Instead of releasing a portion of the raw sugar supply to each mill, as it had done in the preceding three years, a quota was assigned to each refiner and the refiner was asked to designate the mill from which it wished to purchase its raw sugar. The necessary quantity of raw sugar

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[16] The Sugar Act of 1937 expired December 31, 1947, and the sugar control program, with amendments, was reenacted in the Sugar Act of 1948.

was then released to that mill. The total quantity of refined sugar and the quota allowed each refiner were governed by wartime considerations without regard to the provisions of the Sugar Act of 1937. (R. 12-14, 68-69.)

3. A national emergency existed with respect to sugar from April 1942 to November 1947, and during that time the provisions of Title II of the Sugar Act of 1937 were suspended by the President (R. 109).

4. Wartime controls of both imports and exports of sugar existed until October 1947 (R. 109).

5. Sugar was subject to price control from August 1941 to October 1947, and to rationing control from April 1942 until June 1947 (R. 109-110).

6. All shipping in the Caribbean was convoyed because of the menace of enemy submarines, and shipping space was drastically limited (R. 70-72). Even the limited shipping space was not always available at the time needed. When this situation occurred, a chain reaction resulted that affected the ability of refiners to produce and market their sugar. (R. 40-41, 77, 79-80.) The refiners had limited storage facilities (R. 63-64, 66-67). When their warehouses were full and ships were not available, they had to curtail production. This soon required the raw sugar mills supplying the refiners to curtail the production of raw sugar because they too had limited storage facilities. (R. 39, 76, 104.) The problem of

> limited storage space was further intensified by transportation difficulties between the raw sugar mills and the refineries, and between the refineries and the ports. These transportation difficulties were caused or increased by black-out regulations, by gasoline and tire rationing, and by a shortage of bags and other essential materials. (R. 63-64.)

The refiners were not equally affected by these wartime dislocations (R. 23-24, 170, and record references there cited). Some of them were more fortunately located with respect to raw sugar supplies and with respect to port facilities than were others. Some of them were more fortunate than others in obtaining the raw sugar released by Commodity Credit Corporation for refining and shipment to the continental United States. The period was not a normal one,[17] and the competitive relationships between the refiners were not normal ones.

The degree of abnormality is a matter of judgment. The Secretary concluded that the wartime disruptions were so great that allotments based upon marketings during the period 1942-47 would not result in a fair, efficient, and equitable distribution of the quota. While others may differ with

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[17] Although the Sugar Act of 1937 provided for the shipment of 126,033 short tons, raw value, of direct-consumption sugar from Puerto Rico to the continental United States, the quantity shipped during each of the years 1942-47, respectively, was 96,074, 107,589, 78,166, 108,900, 121,543, and 130,063 (R. 147).

that judgment, the portions of the record summarized above amply indicate that the Secretary's judgment was not an arbitrary or capricious one.

After rejecting the period 1942-47, the Secretary concluded that the prewar years 1935-41 would be a representative period for the purpose of considering past marketings. However, as the respondent Roig did not ship direct-consumption sugar to the continental United States during one of those years, and as another refiner (not a party to this action) made no shipments during two of those years (R. 147), the past marketings of each refiner were measured by averaging its marketings for the highest five years of the seven-year period.

The Secretary had a sound, rational basis for choosing the years 1935-41. That represented the entire period preceding the year of allotment during which quotas were in effect. In choosing them, the Secretary conformed to prior administrative practice under the Act,[18] and such practice is entitled to great weight. *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294, 315; *United States* v. *American Trucking Assn's*, 310 U. S. 534, 549; *Gray* v. *Powell*, 314 U. S. 402,

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[18] In the orders allotting the direct-consumption portion of the Puerto Rican quota for 1938 and 1939, the past marketings selected for consideration represented the "years during which a quota system was in effect" (P. R. S. O. No. 11, 3 F. R. 1077), and "the entire period during which a quota system has been in effect and, consequently, are believed to be fair and reasonable under a restrictive program such as that provided for under the present and prior sugar legislation." (P. R. S. O. No. 13, 4 F. R. 97).

412; *Mabee* v. *White Plains Publishing Co.*, 327 U. S. 178, 182.

The respondents relied in the court below upon a comment of Judge (now Chief Justice) Vinson in *Gay Union Corp.* v. *Wallace*, 112 F. 2d 192, 199 (C. A. D. C.), certiorari denied, 310 U. S. 647, to the effect that the selection of a remote period of past marketings "might" effect an arbitrary discrimination if it bore no reasonable relationship to the present marketing situation. The comment, while obviously true, is not applicable to the present case. The selection of a prewar period was made necessary by the wartime dislocations that prevailed during the preceding six years. The reasons for not considering marketings during those years were impelling ones, and the selection of a prewar period was the only alternative available. Marketings during the prewar period were, in fact, the only marketings that bore a reasonable relationship to the present situation.

B. THE ACT DOES NOT PRECLUDE THE SECRETARY FROM MEASURING AN ALLOTTEE'S "ABILITY TO MARKET" THE PORTION OF THE QUOTA ALLOTTED TO HIM BY ACTUAL PERFORMANCE PRIOR TO THE PRECEDING YEAR. THE SECRETARY'S CONSIDERATION OF "ABILITY TO MARKET" WHEN MAKING THE ALLOTMENT UNDER REVIEW WAS NOT ARBITRARY OR CAPRICIOUS.

When making an allotment the Secretary is also required by the Act to take into consideration "the ability of * * * [an allottee] to market or import that portion of such quota * * * allotted to him."

If this standard were being considered for the first time, it might well be regarded merely as a check to be applied after an allotment had been otherwise determined, rather than as one of the affirmative measures of the allotment. That is, the Secretary might first tentatively allot the quota on the basis of the other standards specified in the Act and then consider whether the allottee is able to market the portion of the quota allotted to him. But that is not the construction that has been given the Act, and it is not the construction urged in this proceeding. When allotting the direct-consumption portion of the quota for Puerto Rico under the Sugar Act of 1937, the Secretary consistently considered ability to market as one of the measures of the allotment. In *Gay Union Corp.* v. *Wallace* 112 F. 2d 192, 197, fn. 12, certiorari denied, 310 U. S. 647, the court noted with approval the Secretary's practice. And when Congress enacted the Sugar Act of 1948 upon the expiration of the Sugar Act of 1937, no disapproval of the administrative interpretation and application of the standard was indicated. Furthermore, in the administrative proceedings before the Secretary in this case, the respondents concurred in the proposal to give 50 percent weight to this factor when determining the allotments. Their objection related only to the proposed method of measuring ability to market (R. 47, 120).

Ability to market is difficult to measure. There is no single adequate measure. The Secretary concluded that each allottee's present ability to market could best be measured by its actual performance in the past rather than by its plant capacity alone; that under ordinary circumstances performance during a recent year would be used for the purpose, but the abnormal marketing conditions during the preceding war years made their use as the sole measure of ability unfair and inaccurate; and that it would be fair to use as a measure the highest performance of each allottee during any war or prewar year since 1935, provided such performance was within the limits of its present plant capacity. Thus, the Secretary recognized past performance as an indication of present ability if present physical plant facilities permitted the production of the same or a greater quantity of sugar.

The court below held that actual performance in the past is a permissible measure of present ability to market,[19] but that as a matter of law the only performance that may be considered is performance during the preceding year regardless of any abnormal situation that may have prevailed then. The court said that performance during 12 of the 13 years permitted to be considered by the order

[19] See statements of the same court to the same effect in *Gay Union Corp. v. Wallace*, 112 F. 2d 192, 197, 199, certiorari denied, 310 U. S. 647, a case arising under the Sugar Act of 1937.

under review had nothing to do with ability to market in 1948, and that under the terms of the Act the only performance that may be used as a measure of ability is current performance, meaning performance during the preceding year. Upon the basis of that interpretation of the Act and without considering the reasonableness of the Secretary's action in the light of the facts involved, the court concluded that the Secretary's order was invalid.

The court's interpretation of the Act is clearly erroneous. The statutory standard is "ability to market." The issue presented is the reasonableness of the method used by the Secretary to measure ability to market. Both the Secretary and the respondents are in agreement that past performance is a permissible measure of *present* ability, and the court below accepted that interpretation of the Act. Consequently, the issue is narrowed to one of the reasonableness of the period of past performance selected as a measure. The reasonableness of the period selected depends upon the particular facts involved and not upon a construction of the statute as a matter of law. There is therefore no basis for the court's conclusion that as a matter of statutory construction the only performance that may be considered, as a measure of ability, is performance during the preceding year. Such performance is past performance, despite the court's reference to it as current performance, and

the selection of one period of past performance rather than another involves a matter of judgment for determination by the Secretary and not a question of law. The Secretary's judgment should not be set aside unless it is shown to be clearly arbitrary or capricious.

Performance one, ten, or thirteen years ago is a specific demonstration of ability to market. The figures are not theoretical. They are a record of actual marketings. Moreover, such demonstrated ability may continue to exist over a period of years even though not fully utilized. The court ignored this fact and erroneously assumed that ability demonstrated in a period more remote than the preceding year would never continue to the current year. The erroneous nature of the assumption is illustrated by the marketing record of the respondents. Roig marketed on the mainland 28,657 tons of sugar in 1940. During the next five years (1941-45), however, its maximum annual marketings were only 16,863 tons. Then in 1946 it marketed 24,414 tons. Similarly, Western attained a level no higher than 17,765 tons in any one of the four years 1941 through 1944, but it marketed 25,598 tons in 1940 and 24,655 tons in 1945 (R. 147). Thus, Roig obviously did not lack in 1946 the ability demonstrated in 1940, notwithstanding its failure to utilize its ability fully in the preceding year; and Western clearly had in 1945 an ability greater than that demonstrated in 1944.

Ability to market is affected by a large number of factors that vary from year to year. Peak performance in one year may be followed by decreased marketings in the following year or period of years, and then by a return to the level of marketing that approximates performance in the peak year. If the physical plant facilities of the refiner remain unimpaired, and if there are no facts to show affirmatively that the ability demonstrated in the peak year no longer exists, the logical assumption is that the ability continues to exist and may be demonstrated again in the current year.

A requirement that ability be determined by performance in a particular year or even a short period of years can result in serious inequities to allottees. Necessarily, performance figures during a fixed period indicate the relative positions of the various allottees. If during a particular year conditions are uniformly favorable or unfavorable to all allottees, the year could be a satisfactory basis for a determination of ability. However, if conditions during one year are particularly favorable to some allottees and particularly unfavorable to others, the use of that year would result in discrimination and unfair allotments. Even for a period of years conditions may continue to be abnormally favorable for some and abnormally unfavorable for other allottees. It is therefore important that the Secretary have sufficient latitude to measure ability by the best performance of each

allottee over a period of years, and thus give uniform treatment to all allottees. The Court of Appeals' requirement that ability be measured only by performance during the year immediately preceding the year of allotment would tend to perpetuate the results of accidental misfortunes of production or marketing occurring in that year.

Furthermore, in view of the fact that the performance figures for each refiner go up and down from year to year, the mandatory use for all allottees of performance figures only for the preceding year would never be a realistic measure of ability when the marketing trend is upward. For example, with respect to an individual refiner, the facts in this case show that the performance figure for Porto Rican American in 1947, 60,820 tons (R. 147), was no realistic indication of its ability to market in 1948 because Porto Rican American actually marketed 82,070 tons in that year. With respect to the industry as a whole, performance figures during the severe drought year 1944 were no realistic indication of ability to market in 1945 because there was a general and substantial increase in production and marketing following the drought. See Appendix B. These illustrations indicate the importance of an interpretation of the statutory standard that will not make it rigid and inflexible. The statute should not be construed to require the Secretary to measure ability to market by performance during any one year. He should

be free, when circumstances warrant, to take into consideration abnormal fluctuations in marketings from year to year and to determine ability on the basis of the best performance figures during a period of years.

The court's restrictive interpretation of the standard to preclude measuring ability by performance during any period other than the preceding year will seriously hamper not only the allotment of the direct-consumption portion of the quota for Puerto Rico, but also the allotment of the general quotas prescribed by section 202 for all the domestic sugar-producing areas.

The Secretary's measure of ability to market by past performance was not arbitrary or capricious. Performance during the preceding year 1947 did not fairly reflect the current ability of all refiners because their marketings were controlled by the Commodity Credit Corporation on the basis of wartime considerations that were unrelated to the provisions of the Sugar Act or to normal marketing conditions.[20] One of the refiners (the petitioner Porto Rican American Sugar Refinery, Inc.)

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[20] Respondent Western Sugar Refining Company was allowed to market 29,965 tons, which was more than it had marketed during any preceding year; Respondent Central Roig Refining Company was allowed to market 27,246 tons, which was more than it had marketed during any preceding year except one (1940, when quotas were not in effect); Petitioner Porto Rican American Sugar Refinery, Inc., was allowed to market 60,820 tons, which was considerably less than it had marketed during any of the seven years 1935-41 inclusive (R. 147).

sought permission to market a much larger quantity than originally permitted by Commodity Credit Corporation, and although it had the ability to market the larger quantity permission was denied (R. 68-69, 158). Consequently, it was reasonable for the Secretary to reject 1947 performance figures as a mandatory measure of ability to market for all refiners; the performance figures for that year obviously did not indicate the ability of some of the refiners.

Performance during the war years 1942-46 likewise did not fairly reflect the ability of all refiners because of the wartime dislocations discussed above. During each of those years the combined marketings of all refiners were less than the 126,033 tons authorized by the Act (R. 147), and the separate marketings of each refiner did not reflect fairly its relative ability because the abnormal marketing conditions did not affect all refiners equally. Moreover, performance figures during this period, subject as they were to wartime factors, were not realistic indications of ability to market in 1948 when those wartime disruptions had been removed. So it was entirely reasonable for the Secretary to reject 1942-46 performance figures as a mandatory measure of ability for all refiners.

It was therefore necessary to permit ability to be measured by performance during a prewar

period. The year 1935 was selected as the starting point because that was the first full year when sugar quota legislation was effective. However, there was little reason to choose one year rather than another during the prewar period 1935-41. In fact, no one year during that period could be used without doing an injustice to some refiner. Moreover, the Secretary did not wish to exclude performance figures during the war years for those refiners who were able to demonstrate an increased ability despite the wartime dislocations. He therefore took as a measure of ability the highest performance of each refiner during the entire 13-year period preceding the allotment (1935-47), subject to the qualification that it must be within the limits of its present plant capacity. In each instance, the plant capacity of the refiner was well above the marketings for the year selected to measure ability to market. (R. 17, 28, 149, 164.)

The use of present plant capacity as a check on ability so measured assures the continued existence of the physical plant that made such performance possible. Obviously, if a plant had been destroyed by fire or hurricane and had not been restored, performance figures for any prior year would not indicate present ability.

Plant capacity alone is not a satisfactory measure of ability because in Puerto Rico plant capacity is never fully utilized by any refiner for an entire year. The refiners operate only during the

season when raw sugar mills are grinding cane; the bagasse (the crushed cane stalk), which is a byproduct of the raw mills, is the principal source of fuel for the refiners, and when the grinding season is over the refiners cease operating. The length of the grinding season varies by localities and by years; it is not the same for all refiners in a single year or for a single refiner in different years. Furthermore, the maximum daily capacity demonstrated by production during the grinding season is never maintained throughout the season because of reduced supplies of raw sugar available at the beginning and at the end of the season. Consequently, plant capacity figures computed on an annual basis are theoretical ones based upon conditions that do not exist in practice.

The purpose of considering ability to market is to make a fair, efficient, and equitable distribution of the quota. The fairness of the distribution is a matter of judgment, and under the terms of the Act the judgment of the Secretary is controlling unless it is patently capricious. The factors that influenced the Secretary in his appraisal and measurement of ability to market are fully stated and carefully analyzed in his decision. Although the respondents, and perhaps this Court, might have reached a different conclusion on the basis of the same facts, the Secretary's judgment was a reasonable one and cannot be regarded as arbitrary or

capricious.[21] Even if it were a matter of choosing between two alternatives, it is respectfully suggested that the measure of ability used by the Secretary is more reasonable than the measure required to be used by the opinion of the court below (1947 performance figures), which clearly did not reflect the ability of some refiners.

C. THE ACT DOES NOT REQUIRE THE SECRETARY TO GIVE SOME WEIGHT TO "PROCESSINGS OF SUGAR * * * FROM * * * SUGARCANE TO WHICH PROPORTIONATE SHARES * * * PERTAINED" WHEN THE SECRETARY CONSIDERS THE STANDARD AND DETERMINES IT IS INAPPLICABLE UNDER THE CIRCUMSTANCES INVOLVED

Section 205(a) of the Act directs the Secretary, when making a fair, efficient, and equitable allotment, to take into consideration "processings of sugar * * * from * * * sugarcane to which proportionate shares * * * pertained." Such sugarcane is sugarcane produced within the limits of individual farm allotments; that is, it is each farm's proportionate share of sugarcane needed to be produced to fill the quota for the area (section 301(b) of the Act). Title III of the Act authorizes the Secretary to make conditional payments to producers who, among other things, do not market sugarcane in excess of their proportionate shares. The direction to the Secre-

[21] *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105; *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297; *Federal Radio Commission* v. *Nelson Bros. Co.*, 289 U. S. 266.

tary to consider processings from proportionate-share sugarcane when allotting the quota for an area under Title II is a device to protect producers by assuring them that the raw mills to which they sell their cane will have allotments large enough to permit the marketing of all proportionate-share sugarcane.

The Secretary considered this standard and concluded that it was not applicable to the particular facts involved in making the allotment of the direct-consumption portion of the Puerto Rican quota, and that it should therefore be given a zero weighting. It was regarded as inapplicable because the refiners of more than 90 percent of the sugar used to fill the quota (including the two respondents) processed sugar, not from proportionate-share sugarcane, but from raw sugar. Any weight given to a factor that applied only to refiners of less than 10 percent of the sugar would not produce an equitable result.

The Court of Appeals held that these facts might warrant giving slight weight to the standard, but that as a matter of law the Secretary is required to give some weight to it.

It is submitted that this interpretation is also erroneous. The Act requires only that the Secretary make a fair, efficient, and equitable distribution of the quota "by taking into consideration" the three specific standards, and the Secretary explicitly gave consideration to this standard in the

instant case. The Act says only that he shall consider the three standards; it does not say how much weight, if any, he shall give to each of them. If the Secretary determines, after considering all the facts, that a fair and equitable allotment requires a zero weighting to be given to processings of sugar from proportionate-share sugarcane, there is nothing in the language of the Act that justifies a conclusion that he must nevertheless give a nominal weight to the standard. The Act makes no more distinction between a zero and a nominal weighting of one percent than it does between a 49 percent and 50 percent weighting. Moreover, the court's action in remanding the case to the Secretary for the assigment of a nominal weight to the standard is a meaningless gesture because the action would have no appreciable effect upon the final allotment figures.

A proportionate share is a farm's proportionate share of the sugarcane needed to be produced to fill the general quota for the area. The term relates only to the general quota; it bears no relation whatever to the direct-consumption portion of the quota.[22] The statutory requirement that processings of proportionate-share sugarcane be considered when allotting a quota has particular relevance to allotments of the general quotas because

[22] The general quota for an area is the total amount of sugar from the area that may be marketed in any form in the continental United States. The direct-consumption portion of quota is the portion that may be marketed in the form of direct-consumption sugar (which is usually refined sugar).

it is the allottees of those quotas (i.e., the raw sugar mills) that buy and process proportionate-share sugarcane. Such processings therefore have a direct bearing upon the amount of the general quotas that should go to each allottee; that is, each allottee should receive an allotment large enough to permit him to process all proportionate-share sugarcane brought to his raw mill by producers. In some areas, however, including Puerto Rico, the refiners of most of the sugar marketed in the United States in direct-consumption form do not themselves process proportionate-share sugarcane; they refine raw sugar purchased from the raw mills. Consequently, the statutory standard has little or no relevance to the allotment to the refiners of the direct-consumption portion of the quota in those areas. Whether the Secretary is warranted in giving no weight to the standard must depend upon the particular circumstances involved and not upon an abstract interpretation of the standard without reference to the facts.

The lower court's unqualified assertion that the Secretary must always give some weight to this standard is demonstrably erroneous. Thus, the Act provides for the allotment of quotas or parts thereof for different areas, both domestic and foreign. The same statutory standards, however, govern the making of all allotments. If a quota for a foreign area, e.g., Cuba, should be allotted to the importers of sugar from the area, as the Act

authorizes, it would be impossible to give this particular factor any affirmative weight. The Act does not, of course, provide for the assignment of proportionate shares to individual farms in Cuba. Consequently, no importer-allottee could be a processor of proportionate-share sugarcane grown in Cuba, and the standard would of necessity be given a zero weighting.

The court below, in support of its interpretation of the Act, relied upon the fact that in the Sugar Act of 1937 the three standards to be considered by the Secretary were joined by the disjunctive "or," but that when the Sugar Act of 1948 was enacted the disjunctive "or" was changed to the conjunctive "and." The legislative history of the Act throws no light on the reason for this change. The lack of an explanation is unimportant, however, because the language of the Act cannot reasonably be construed to require the Secretary, after considering the pertinent facts, to give some weight to all three factors under all circumstances. He must be free to vary the weight assigned to each according to the differing circumstances, and the weight assigned may reach the vanishing point. It is important to note, however, that the Government does not contend in this case that the Secretary has discretionary power to make allotments at will upon the basis of any one or any combination of the three standards set forth in the Act, ignoring the standard or standards not invoked. That issue is not

presented here. The Government contends merely that when the Secretary finds that under the particular facts before him one of the standards is not applicable, and his finding has a reasonable basis in fact, he may give the standard a weighting of zero when making the allotment. The statutory direction to "consider" three different standards when allotting a quota does not mean that the Secretary must base his allotment on all three standards when he has considered them and determined that one of them is capable of application only in such a limited manner that it would not contribute to a fair, efficient, and equitable distribution.[23]

Quite aside from the fact that the Secretary's conclusion that the standard should be given a zero weighting was reasonable, it clearly did not prejudice the respondents. The standard refers to processings of sugar from proportionate-share sugarcane. With few exceptions, the only sugar processed from sugarcane is raw sugar, and the processing occurs at the various raw sugar mills. The raw sugar is then sold by the raw mills to the refiners and is refined by them into direct-consumption sugar. The refined sugar is therefore ordinari-

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[23] An example of a situation in which the "processings" standard may be and customarily is applied is the allotment of the general sugar quota in Puerto Rico (as distinguished from the direct-consumption portion of the quota). The allotments are made to the raw mills, where the first marketing of sugar occurs. Those mills process raw sugar from sugarcane, and their allotments may readily be based in part upon the extent to which the sugarcane processed is sugarcane to which proportionate shares pertained.

ly not processed directly from sugarcane, but is processed from raw sugar that was itself processed from sugarcane. The refining process is one step removed from the processing of the sugarcane. The Secretary has heretofore construed the statutory standard to refer only to the processing of the sugarcane and not to the processing of the raw sugar. The court below said that the construction is a proper one (R. 196-197).

The three largest refiners in Puerto Rico (the competing parties in this action), which normally market 90 percent of the direct-consumption portion of the Puerto Rican sugar quota, do not process sugar directly from sugarcane. They buy their supplies of raw sugar from various raw sugar mills rather than process it themselves. Consequently, if this standard were given any weight, it would apply only to the three refiners that market less than 10 percent of the direct-consumption sugar quota.[24] The allotment of a quota upon the basis of a standard that would not apply to the refiners of 90 percent of the direct-consumption sugar would be neither fair nor efficient nor equitable.

Furthermore, the three refiners that market less than 10 percent of the direct-consumption portion of the sugar quota actually process large quantities

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[24] P. R. S. O. No. 17, 6 F. R. 2410, which allotted the 1941 general sugar quota for Puerto Rico (not the direct-consumption portion of the sugar) listed 32 processors and only three of them (Aguirre, Guanica, and San Francisco) were eligible to participate in the allotment of the direct-consumption portion of the quota (see P. R. S. O. No. 16, 5 F. R. 4748).

of raw sugar from sugarcane. Two of them (Aguirre and Guanica) are the second and fourth largest producers of raw sugar in the island, and each produces almost as much raw sugar as the entire direct-consumption portion of the quota. Appendix B. Most of the raw sugar is not refined by them (R. 147, 150). If their allotments of direct-consumption sugar had been based upon such processings of raw sugar from sugarcane,[25] the allotments would have been grossly disproportionate to their actual marketings of direct-consumption sugar and the relationships existing between the various refiners would have been completely distorted.

The respondents were not prejudiced by the Secretary's conclusion that no weight would be given to the standard, because they process no raw sugar from sugarcane and would have received no advantage or benefit from the use of the standard. They did not urge that any weight be given the standard during the administrative proceedings before the Secretary, and first made the contention before the Court of Appeals. They would seem to have no standing to attack the allocation on this ground.

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[25] All sugarcane grown and processed in Puerto Rico from 1942 through 1948 (and also in 1949) was sugarcane to which proportionate shares pertained. Proportionate shares were not restrictive during that period. The Secretary determined that the proportionate share of each farm would be equivalent to the quantity produced on the farm.

D. THE SECRETARY DID NOT APPLY AN EXTRA-STATUTORY STANDARD UNAUTHORIZED BY LAW.

The respondents contended in the court below, and the contention is repeated here (Br. in Op. 8-9), that the controlling standard used by the Secretary when allotting the quota was the restoration of prewar competitive relationships between the three principal refiners, and that the standards of past marketings and ability to market were used as mere cloaks for the unauthorized standard actually used. The contention is based upon an inference from the fact that the 1948 allotments were roughly comparable to the 1941 allotments.

This is an argumentative statement regarding the motives of the Secretary. As has been demonstrated, the Secretary's decision was based upon the controlling standard prescribed by the Act—i.e., a "fair, efficient, and equitable" distribution of the quota. The fact that the distribution made by the Secretary approximated the quotas for 1941 is a coincidence.

Any period of past marketings necessarily reflects the competitive status of the refiners during the period chosen. A prewar period was chosen by the Secretary, not because of the particular competitive relationship that existed then, but because marketings during the succeeding war period did not provide a fair base for allotments. Moreover, the Secretary's method of measuring ability to market obviously was not intended to restore a

competitive relationship that existed at any particular time, because each refiner's ability to market was measured by its highest marketings during a period of years and the peak performance for all refiners did not occur in the same year.

II. THE STATUTORY LIMITATION ON THE PORTION OF THE GENERAL SUGAR QUOTA FOR PUERTO RICO THAT MAY BE FILLED WITH DIRECT-CONSUMPTION SUGAR DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT.

The respondents in No. 27 and No. 30 and the Government of Puerto Rico, the petitioner in No. 32, contended in the court below that the statutory limitation on the portion of the general sugar quota for Puerto Rico that may be filled with direct-consumption sugar is invalid because it violates the due process clause of the Fifth Amendment. The Court of Appeals refrained from deciding the issue because the Secretary's order was reversed on other grounds. The respondents and the Government of Puerto Rico contend in this Court that they are entitled to an adjudication of that issue, that it was error for the Court of Appeals to refrain from deciding it, and that the issue should now be decided by this Court.

The contention is advanced by the Government of Puerto Rico in its petition in No. 32 and by the respondents in their brief in support of the petition. The respondents did not themselves cross-petition for a writ of certiorari; however, in their

brief in opposition in No. 27 and No. 30 they announced their intention to support the judgment of the court below on the basis of their contention regarding the unconstitutionality of the statutory limitation (Br. in Op. 11). If the Government's contention that the Secretary properly interpreted and applied the statutory standards governing allotments is correct, the Constitutional issue will need to be decided.

The status of the Government of Puerto Rico to maintain a review proceeding in this Court has been challenged by the American Sugar Refining Company, *et al.*, intervenors in the court below, on the ground that the Government of Puerto Rico has no justiciable interest in the constitutional issue (Br. in Op. 14-15). The justiciable nature of Puerto Rico's interest in the issue is not free from doubt. *Massachusetts* v. *Mellon*, 262 U. S. 447; *Florida* v. *Mellon*, 273 U. S. 12; *Georgia* v. *Pennsylvania R. Co.*, 324 U. S. 439, 446; *National Bank* v. *County of Yankton*, 101 U. S. 129; *Mormon Church* v. *United States*, 136 U. S. 1; *Inter-Island Steam Navigation Co.* v. *Hawaii*, 305 U. S. 306. However, the constitutional issue is also raised by the respondents in No. 27 and No. 30, and their interest in the issue is clearly justiciable.

A. THE STATUTORY LIMITATION ON THE DIRECT-CONSUMPTION PORTION OF THE SUGAR QUOTA FOR PUERTO RICO IS AN INTEGRATED PART OF THE SUGAR ACT OF 1948.

The Sugar Act restricts the amount of sugar that may be marketed in the continental United States each year to an amount determined by the Secretary on the basis of the needs of consumers. In order to give fair access to the consumer market thus limited, the Act fixes a quota for the amount of sugar that may be marketed in the continental United States from each sugar-producing area. The sugar-producing areas are classified into two groups—domestic and foreign. The domestic producing areas consist of two areas on the mainland and three territories. The principal foreign sugar-producing areas are Cuba and the Republic of the Philippines (section 202 of the Act).

The quotas are general ones limiting the amount of sugar that may be marketed in any form, either raw or refined, from each area of supply. However, the general quotas for the principal offshore areas, both domestic and foreign, are qualified by section 207 of the Act which limits to a portion of each quota the amount that may be filled in the form of refined sugar. The balance of each quota must be filled with raw sugar, which is then refined by the refiners on the mainland before being sold to consumers. No comparable limitation is placed upon the quota for the mainland cane sugar area because all the raw sugar processed from the

sugarcane grown in the area that is refined is refined by the mainland refiners. No comparable limitation is placed upon the quota for the domestic beet sugar area because there is no intermediate raw sugar stage in the processing of sugar beets. Sugar beets are processed directly into refined sugar, and the sugar is therefore marketed only in that form.

Clearly, the purpose of the limitations in section 207 is to distribute among the mainland refiners and the offshore refiners the opportunity to refine the limited quantity of sugar permitted to be marketed under the general quotas. The mainland refiners obtain most of their raw sugar supplies from the offshore areas. If the full amounts of the quotas for offshore areas could be imported in refined form, the mainland refiners would lose to the offshore refiners their major sources of supply of raw sugar. By limiting the portions of the quotas for the offshore areas that may be filled with refined sugar, section 207 assures a division of the restricted raw sugar supplies between the two groups.

These limitations are part of an integrated system governing the marketing of all sugar. The Sugar Act of 1948 is designed to stabilize the entire sugar industry, including both the production and the refining of sugar, and to protect the interests of consumers. The regulatory scheme adopted is not restricted to the production or marketing of

raw sugar. Control over the marketing of refined sugar is a part of the entire plan of regulation. The Congressional purpose to regulate the marketing of all sugar in the interests both of consumers and of the entire sugar industry is clearly indicated. The report of the House Committee on Agriculture on the bill that became the Sugar Act of 1948 said: "Like its predecessors the Jones-Costigan Sugar Act of 1934 and the Sugar Act of 1937, the bill has as its primary objective the *stabilization of the sugar producing, refining, and importing industries.*" H. Rep. No. 796, 80th Cong., 1st Sess., p. 1. And the Act itself directs the Secretary, when determining the amount of sugar needed by consumers, to make his determination in a manner that will "protect the welfare of consumers *and of those engaged in the domestic sugar industry*" and to determine an amount that will provide "such supply of sugar as will be consumed at prices which will not be excessive to consumers *and which will fairly and equitably maintain and protect the welfare of the domestic sugar industry*" (Sec. 201) (italics supplied). The refiners are a part of the "sugar industry."

Regulation of the marketing of refined sugar from offshore areas has been an integral part of sugar control legislation since its inception. The background of the legislation is not adequately indicated by a recital of the evils that afflicted the portion of the industry involved in the production

of raw sugar. The remedy for those evils must be considered in the light of the impact of the remedy upon the refining part of the industry; and the Congressional purpose to deal with the problems of the entire industry is clear from the explicit statement quoted above and from the regulatory scheme adopted. Congress might have restricted its regulatory scheme to one designed to benefit only producers and consumers of sugar, ignoring the problems of the refiners, but it did not do so. It chose to adopt a more comprehensive scheme that recognized the position of the refiners as an essential part of the domestic sugar industry, and that deals with their problems as well as with the problems of producers and consumers.

B. THE STATUS OF PUERTO RICO.

Puerto Rico is an unincorporated territory of the United States—a territory that belongs to the United States but has not been incorporated as a part of the Union of States. The cases do not leave that point open to doubt. The distinction between incorporated and unincorporated territories was first announced and applied in *Downes* v. *Bidwell*, 182 U. S. 244, where the Court held that Puerto Rico is a territory not incorporated in the United States and therefore not subject to the requirement that taxes be uniform throughout the United States. As recently as 1945, this Court reaffirmed the holding. In *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 673, the Court said:

> That our dependencies, acquired by cession as the result of our war with Spain, are territories belonging to, but not a part of, the Union of states under the Constitution, was long since established by a series of decisions in this Court beginning with *The Insular Tax Cases* in 1901; *De Lima* v. *Bidwell, supra; Dooley* v. *United States, supra,* 182 U. S. 222; *Downes* v. *Bidwell,* 182 U. S. 244; *Dooley* v. *United States,* 183 U. S. 151; and see also *Public Utility Commissioners* v. *Ynchausti & Co.,* 251 U. S. 401, 406-407; *Balzac* v. *Porto Rico, supra.* This status has ever since been maintained in the practical construction of the Constitution by all the agencies of our government in dealing with our insular possessions.

See also *Balzac* v. *Porto Rico,* 258 U. S. 298; *Puerto Rico* v. *Shell Co.,* 302 U. S. 253, 257; *National Labor Relations Board* v. *Gonzalez Padin Co.,* 161 F. 2d 353, 355 (C. A. 1); *Buscaglia* v. *Ballester,* 162 F. 2d 805, 807 (C. A. 1); Willoughby on the Constitution, 2d ed., Chapters XXX and XXXI.

When dealing with a territory, Congress has full, plenary, sovereign power, which stems from the territorial clause of the Constitution.[26] Under

[26] "It is no longer doubted that the United States may acquire territory by conquest or by treaty, and may govern it through the exercise of the power of Congress conferred by § 3 of Article IV of the Constitution 'to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.' *Dooley* v. *United States, supra,* 183 U. S. at 157; *Dorr* v. *United States,*

this power Congress may legislate for the territories in any manner it considers wise and in the public interest. The public interest includes both the interest of the territory and the interest of the United States.

The Government does not, of course, contend that the power of Congress over a territory is absolute and despotic. This Court pointed out in *Downes* v. *Bidwell*, 182 U. S. 244, that the Constitution contains some provisions that are absolute withdrawals of power from Congress in favor of human liberty, and that in the exercise of a specifically granted power Congress may not transcend such limitations. These absolute prohibitions of power were not identified, but it is a fair inference that they were intended to include the due process clause of the Fifth Amendment, which provides that no person shall be deprived of liberty or property without due process of law.

The precise issue in the present case is whether Congress, in the exercise of its plenary power to govern a territory and to regulate its commerce, may regulate the economy of the territory differently from the economy of the United States, and in furtherance of its conception of sound public

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195 U. S. 138, 149; *Balzac* v. *Porto Rico*, *supra*, 305; *Cincinnati Soap Co.* v. *United States*, 301 U. S. 308, 323; *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 673-4. See also *Mormon Church* v. *United States*, 136 U. S. 1, 42; *De Lima* v. *Bidwell*, 182 U. S. 1, 196; *United States* v. *McMillan*, 165 U. S. 504, 510; *National Bank* v. *County of Yankton*, 101 U. S. 129, 133.

policy limit the importation into the United States of sugar refined in the territory.

C. THE DUE PROCESS CLAUSE DOES NOT PRECLUDE A LIMITATION ON THE IMPORTATION OF SUGAR FROM PUERTO RICO AND OTHER OFFSHORE AREAS THAT IS DESIGNED TO PROTECT A SEGMENT OF THE DOMESTIC REFINING INDUSTRY.

It is beyond dispute that Congress has the power to limit the amount of goods that may be imported into the United States from a foreign country, or even to impose an absolute embargo upon such importation, whenever it believes the limitation or exclusion would be in the public interest. The power is derived from the authority to lay and collect taxes and import duties, and the power to regulate commerce with foreign nations (Art. I, § 8). *Buttfield* v. *Stranahan*, 192 U. S. 470; *Hampton & Co.* v. *United States*, 276 U. S. 394.

The authority of Congress to limit imports into the United States is not restricted to imports from foreign countries. It also extends to imports from the territories that are not incorporated in the United States. In *Downes* v. *Bidwell*, 182 U S. 244, the Court sustained the validity of a duty upon imports from Puerto Rico. That was the precise issue decided by the Court, and the holding was cited with approval in the recent case of *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 674. In the latter case the Court, holding that goods shipped to

the United States from the Philippines while they were still a territory were imports within the tax power of Congress and consequently were not subject to taxation by a state, pointed out that:

> Congressional legislation governing trade relations of the United States with the Philippines * * * has often treated articles brought from the Philippines to the United States as imports [p. 678].

and that:

> Our tariff laws in their practical operation have in general placed merchandise brought from the Philippines into the United States in the same relationship to the constitutional taxing power of the national government and the states as articles brought here from foreign countries [p. 678].

The Court concluded:

> Congress is free, as in the case of other imports, to regulate the flow of merchandise from the Philippines into the United States by the imposition of either customs duties or internal revenue taxes [p. 679].

In the light of this case, it is clear that Congress may limit or prohibit the importation of goods from a territory in the same manner and to the same extent that it may deal with goods coming from foreign countries. What Congress may do indirectly, by an exercise of the tax power, it may do directly, by an exercise of its plenary powers

under the territorial and commerce powers. Cf. *Buttfield* v. *Stranahan*, *supra*, at p. 492-493.

It has long been settled that Congressional limitation of imports into the United States for the purpose of encouraging a domestic industry presents no due process problem. *Hampton & Co.* v. *United States*, 276 U. S. 394, 411-412; *Buttfield* v. *Stranahan*, 192 U. S. 470, 493.

The principle is as applicable to imports from a territory as to imports from foreign countries. In *Cincinnati Soap Co.* v. *United States*, 301 U. S. 308, the Court sustained the validity of a tax imposed upon the first domestic processing of coconut oil imported from the Philippines. The validity of the tax was challenged on the ground that it was imposed for the purpose of protecting industries in this country from competition by industries in the territory. The contention was rejected by the Court in these words (p. 320):

> The tax itself, it is said, was imposed for the purpose of protecting certain industries in this country; and it is challenged on that ground. That Congress has power to levy a tax with the collateral purpose of thereby protecting the industries of the United States is no longer open to doubt. *Hampton & Co.* v. *United States*, 276 U. S. 394, 411.

The Court also pointed out (p. 320) that Congress properly may balance the interests of the people in a territory against the interests of the people in the continental United States, and that the extent

of the relief afforded to one or the other is a matter "not for judicial but for Congressional consideration and determination." [27]

Section 207 of the Sugar Act of 1948 limits the amount of refined sugar that may be imported from Puerto Rico and other offshore areas. The limitations are parts of the general quotas for the areas. The purpose and the effect of the limitations are to make the balance of the general quotas available to the mainland refiners for processing, and thus distribute among the mainland and offshore refiners the opportunity to refine the limited quantity of sugar permitted to be marketed. The limitation in section 207 is closely analogous to a protective tariff designed to protect the mainland industry against unrestricted competition from foreign and territorial refiners. The validity of such legislation under the tax power would be clear, and the validity of the limitation in the Sugar Act under the territorial power, or commerce power, is equally clear.

In addition to *Downes* v. *Bidwell* and *Cincinnati Soap Co.* v. *United States, supra*, which involved a regulation of commerce between territories and

[27] "It is not improbable that a failure to exercise control over imports [into the United States] from the Philippines [while they were still a territory] would injuriously affect the industries of this country; and, on the other hand, an exercise of the power to tax imports might prove injurious to the people of the islands. Congress, in passing the legislation here under consideration, is not forbidden to balance these respective probabilities." *Cincinnati Soap Co.* v. *United States*, 301 U. S. 308, 320.

states by means of the tax power, there are other examples of valid Congressional controls over such commerce that favor the residents of the one or the other area. Thus, Congress may deny to residents of a territory rights given to residents of states to utilize foreign ships for the transportation of goods between points in the United States. *Alaska* v. *Troy*, 258 U. S. 101. Residents of territories were required by the statute under review to use domestic ships for that purpose even though foreign transportation might be available at lower rates. The legislation was assumed by the Court to discriminate against the residents of the territory.

Congress may prohibit residents of one territory (Alaska) from importing into the territory intoxicating liquors, without imposing similar restrictions upon the residents of the other territories or states. *Endleman* v. *United States*, 86 Fed. 456 (C. A. 9).

Congress may by delegation to the Puerto Rican legislature[28] prohibit the shipment from Puerto Rico to the continental United States of distilled spirits in containers holding more than one gallon. *Bacardi Corp.* v. *Domenech*, 311 U. S. 150. The purpose of the legislation was to benefit the territorial distilling industry by requiring liquor to be bottled locally rather than exported in bulk for

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[28] "Both the territorial and federal laws • • • are creations emanating from the same sovereignty." *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 264.

bottling in the states. The effect necessarily was to discriminate against the distilling industry in the states. When upholding the statute, this Court said that the legislature could "have absolutely interdicted * * * exportation from the Island" (p. 168). The greater power to prohibit includes the lesser power to limit.

It is immaterial from the standpoint of the due process clause whether the challenged legislation favors the residents of the territory or the residents of the states. Legislation favoring the one group discriminates against the other, and if the due process clause does not prohibit discrimination in the one case it does not do so in the other. There is no significant difference between the validity of legislation prohibiting or limiting the shipment of distilled spirits from Puerto Rico to the states for the purpose of protecting the territorial distilling industry and legislation limiting the shipment of refined sugar from Puerto Rico to the states for the purpose of protecting the mainland refining industry.

D. THE STATUTORY LIMITATION ON THE DIRECT CONSUMPTION PORTION OF THE SUGAR QUOTA FOR PUERTO RICO IS NOT AN "INVALID ABRIDGMENT OF THE LIBERTY OF PERSONS IN PUERTO RICO TO AND WITHIN THEIR TRADE."[29]

The Government of Puerto Rico contended at length in the court below, and an outline of the argument is repeated in its Petition for a Writ of Certiorari, that citizens of Puerto Rico are guaranteed the "ancient and established right of a trade," and that section 207(b) of the Sugar Act of 1948 denies or abridges the liberty of persons in Puerto Rico to and within their trade without due process of law. Although the brief for Puerto Rico did not identify in words the liberty of trade that allegedly is abridged, Puerto Rico is presumably talking about the right of a person in Puerto Rico to engage in the business of refining and marketing sugar.

Nothing in section 207(b) of the Act denies or abridges the right of any person in Puerto Rico to engage in the sugar business. It places no restriction on the right of any person to engage in the production of sugarcane. No restriction is placed upon the right of any person to build a new refinery and engage in the business of refining sugar from sugarcane. There is no restriction on the right of an existing refinery to enlarge or expand its plant. And there is no restriction on the right

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[29] This phrase is from the brief of the Government of Puerto Rico in the court below.

of any refiner in Puerto Rico to market his sugar anywhere in the world, except in the continental United States. If he chooses to market his sugar in the continental United States, he must do so in accordance with a quota system that applies to all areas of supply for that market. A limitation of that character is not an abridgment of the ancient and established right of a person to a trade, as that concept has developed historically.

The contention of Puerto Rico thus amounts to a contention that all persons in Puerto Rico have an ancient and established right to refine sugar from sugarcane grown on the island and to market the refined sugar in the continental United States. Apparently Puerto Rico recognizes that the right is subject to some limitation, because it concedes that the general quota prescribed by the Act limiting the total amount of Puerto Rican sugar, either raw or refined, that may be marketed in the continental United States is not an invalid abridgment of this "ancient and established right to a trade." The general quota for Puerto Rico prior to adjustment is 910,000 short tons, and standing alone it fixes the maximum amount of refined sugar from Puerto Rico that may be marketed in the continental United States. Puerto Rico concedes that this limitation is valid; it contends only that the provisions of section 207(b) fixing a lower maximum (126,033 short tons) for the amount of refined sugar that may be marketed is invalid. That

is, a 910,000 ton limitation is not alleged to be an abridgment of the ancient right to a trade, but a 126,033 ton limitation is.

When stated in these terms, it is apparent that the lengthy discussion in the Puerto Rican brief of the ancient and established right of citizens to their trade is confusing rather than helpful in a determination of the Constitutional validity of the legislative limitation. The issue is not one of freedom to engage in a trade; such freedom concededly is subject to limitation. The issue is whether the due process clause precludes Congress from distinguishing between and imposing different limitations upon the rights of all refiners of sugarcane grown in a territory, on the one hand, and the rights of all refiners of sugarcane grown in the states on the other hand, to market in the continental United States the sugar refined by them. A discussion of the general right to engage in a trade contributes nothing to a resolution of the issue.

It should be noted that the statutory limitations are not imposed upon the citizens or residents of either area. They limit the marketing of sugar produced from sugarcane or sugar beets grown in each area without regard to the status of the person who does the marketing. A citizen or anyone else residing in Puerto Rico and a citizen or resident of a state are subject to the same limitation when they refine in Puerto Rico sugarcane grown in that territory. For example, if a resident of

Florida should build a sugar refinery in Puerto Rico, he would be subject to the same limitation on the marketing of refined sugar in the continental United States that applies to resident Puerto Ricans. Likewise, if a resident Puerto Rican should build a refinery in one of the states, he would be subject to the same limitation that applies to all other persons marketing sugar refined on the mainland.

It should also be noted that the discussion of "ancient liberties" in the brief for Puerto Rico is in extremely general terms, and does not relate the right to engage in a trade to the precise issue involved. The brief does not particularize what is meant by the phrase "the right of a man to, and liberty within, his trade." Assertedly, that right was recognized while Puerto Rico was governed by Spain. But what did the right include? Apparently it did not include the right to market territorial products in Spain without discrimination because the brief points out that such imports were subject to the imposition of preferential duties of long standing. The brief also asserts that citizens of Puerto Rico have acquired by grant from the United States the "right to a trade" that was evolved in English common law. Again, the pertinent inquiry is, what does the right include? How does the right bear on the power of Congress to regulate trade between a territory and a state? Those questions are not discussed or answered.

Vague statements about the right to enter a trade of one's choice, freedom of action within the trade, free access to an open market, ancient liberties, and inalienable liberties are assumed to apply to the facts of this case. That assumption is nowhere demonstrated.

Each of the rights stated in these general terms is, in fact, subject to regulation and restriction. As a single example, the free access to an open market for agricultural producers is substantially restricted by the marketing quota provisions of the Agricultural Adjustment Act of 1938, 52 Stat. 31, as amended, 7 U. S. C. 1281 *et seq.*, which were sustained in *Mulford* v. *Smith*, 307 U. S. 38, and in *Wickard* v. *Filburn*, 317 U. S. 111. None of the cases heretofore cited by Puerto Rico in its discussion of this point has any bearing upon the validity of the type of restriction involved in the present case—a uniform restriction on the right of all persons to market in the continental United States sugar refined from sugarcane grown in the territory of Puerto Rico.

E. THE RECORD DOES NOT SHOW THAT THE DIRECT-CONSUMPTION PORTION OF THE PUERTO RICAN QUOTA IS DISCRIMINATORY WITHIN THE MEANING OF THE DUE PROCESS CLAUSE.

Assuming, *arguendo*, that a regulation of commerce between Puerto Rico and the states must not discriminate arbitrarily against the inhabitants of

the island as a group, the record in this case shows no such discrimination.

The authority of Congress to restrict by a quota system the shipment of agricultural commodities in interstate or foreign commerce in order to maintain a proper balance between available supplies and the demands of consumers, and thereby minimize abnormal surpluses, shortages, and price fluctuations, is no longer open to controversy, provided only that the restriction be not so discriminatory as to violate the due process clause. In the Agricultural Adjustment Act of 1938, as amended, 52 Stat. 31, as amended, 7 U. S. C. 1281 *et seq.*, Congress restricted such shipments, and the validity of the legislation has been sustained by the Court as a permissible exercise of the commerce power. *Mulford* v. *Smith*, 307 U. S. 38; *Wickard* v. *Filburn*, 317 U. S. 111. The purpose of the Sugar Act of 1948 is comparable to that of the Agricultural Adjustment Act of 1938 in that it is designed to establish a proper balance between supply and demand, and the inclusion of both states and territories within the quota system presents no additional question insofar as the power of Congress is concerned. The territorial power is broader than the commerce power.

A quota system by definition differentiates between geographical areas and between individuals within those areas. Consequently, the mere imposition of quotas that are different does not *per se*

violate the due process clause. The respondents apparently recognize this fact, for they do not contend that the mere imposition of different general sugar quotas for the various areas of supply (500,000 short tons for the two states comprising the mainland cane sugar area, 1,800,000 short tons for the states (approximately 20) comprising the domestic beet sugar area, and 910,000 short tons for Puerto Rico) is discriminatory on its face. Hence, in order to sustain their contention the respondents must demonstrate affirmatively the discriminatory nature of the quotas. This they have failed to do.

The only evidence of discrimination relied upon by the respondents in the court below consisted of statements by various executive officials and by members of Congress opposing the legislation when the sugar legislation was under consideration. Those statements characterized the direct-consumption portion of the quota for Puerto Rico as "discriminatory." They are of no significance in this proceeding, however, because they are mere individual predictions of the effect the proposed legislation would have if enacted into law, and are not evidence of the actual effect of the statute when applied to the facts of this particular case. As this Court said in *Downes* v. *Bidwell*, 182 U. S. 244, 254:

> The arguments of individual legislators are no proper subject for judicial comment. They

> are so often influenced by personal or political considerations, or by the assumed necessities of the situation, that they can hardly be considered even as the deliberate views of the persons who make them, much less as dictating the construction to be put upon the Constitution by the courts.

Aside from the wisdom of the legislation, it is submitted that the limitation on the direct-consumption portion of the sugar quota for Puerto Rico has a reasonable historical basis. The Act is designed simply to preserve the pattern of marketing as between areas which prevailed when sugar control legislation was first adopted. Prior to the adoption of sugar control legislation, all sugar refined from sugarcane grown in mainland areas of supply was refined in those areas. Moreover, most of the sugar imported from offshore areas was imported in raw form and further refined on the mainland before being marketed to consumers. When Congress first adopted sugar control legislation, it provided for a quota system that would preserve that pattern of marketing. Under the Jones-Costigan Act of 1934, 48 Stat. 670, 7 U. S. C. 608a, 609, 611, the Puerto Rican direct-consumption sugar quota was fixed at a figure equal to the largest quantity of direct-consumption sugar shipped from Puerto Rico to the United States during any one of the preceding three years. The same standard was used for determining the refined sugar quotas for the other territories and

possessions. The amount of the refined sugar quota for Puerto Rico according to that standard was computed to be 126,033 short tons, raw value.[30] No direct-consumption limitation was placed on the quotas for the two areas on the mainland because none was needed. The refining of the raw sugar produced in the mainland cane sugar area is always done by mainland refiners, and sugar from the domestic beet sugar area is produced in a single process, with no intervening "raw" stage as in the processing of sugarcane.

Thus, the direct-consumption sugar quotas first established under the 1934 legislation were designed to maintain the status quo between the refiners in Puerto Rico and the refiners in the states. The Puerto Rican refiners were allowed to refine and send to the continental United States the maximum amount of direct-consumption sugar they had previously shipped, and the continental refiners were allowed to refine the remainder of the Puerto Rican raw sugar shipped to the states and all cane sugar[31] produced in the states, as they had done prior to the passage of the legislation. Quotas computed in that manner were not arbitrary and discriminatory.

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[30] General Sugar Quota Regulations, Series 1, p. 4, June 9, 1934; General Sugar Quota Regulations, Series 2, Revision 1, p. 4, August 17, 1935.

[31] Because of the method of processing sugar beets, none of the beets from the beet sugar area are an available source of supply for the continental refiners of sugarcane.

The same limitations on direct-consumption sugar were continued in succeeding legislation, and they are included in the present Act. Congress has thereby maintained the status of the Puerto Rican refiners that existed immediately prior to 1934.

Although the Sugar Act does not limit the portions of the quotas for the two continental areas that may be marketed in the form of direct-consumption sugar, the general quotas are as much a limitation upon the mainland refiners as the Puerto Rican direct-consumption quota is a limitation upon the Puerto Rican refiners. The general quotas for the mainland areas, and for all other areas of supply, restrict the total sources of supply of raw sugar that are available to the mainland refiners for domestic consumption. They may not refine raw sugar from non-quota areas and market it in the United States, and they may not market over-quota sugar from a quota area. After they have exhausted the raw sugar supplies available to them under the general quotas prescribed by the Act, they may not acquire any more sugar for domestic consumption. Thus, the mainland refiners are restricted by the limitations imposed upon their sources of supply, while the Puerto Rican refiners are restricted by the limitation upon the amount of direct-consumption sugar they may ship.[32]

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[32] This effect was recognized and discussed at the Congressional Hearings on the bill that became the Sugar Act of 1937.

The limitation upon the mainland refiners' sources of supply is a flexible one which increases or decreases in accordance with the Secretary's determination of consumer needs. If those needs increase, the general quota for Cuba (which has the major residual quota) increases and the quantity of raw sugar available to the mainland refiners is thereby increased. Conversely, if consumers' needs decrease, the quota for Cuba decreases and the refiners' sources of supply decrease. The Puerto Rican refiners, however, are not affected by this factor because they are given the right to market in the states the 126,033 short tons prescribed by the Act regardless of the total consumers' needs determined by the Secretary.

In actual experience, the restriction on the mainland refiners has been more severe than the restriction on the Puerto Rican refiners. Under the present Act and its predecessors, the Puerto Rican refiners have been authorized to market in the continental United States a maximum of 126,033 short tons, raw value, of direct-consumption sugar each year. That is the largest quantity ever marketed by them, and the record was established in the year

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Hearings before Senate Committee on Finance, 75th Cong., 1st Sess., on H. R. 7667, p. 73: "There is a quota on continental refining because the quota law says that all persons who want to refine sugar on the continent can buy only a certain amount of raw sugar. That just as effectively imposes a refining quota upon the continent as would a specific sentence saying literally that the total refined sugar output of the continent shall not exceed so many tons raw value, or a stated percentage of total consumption."

1933. In the preceding four years the quantity marketed ranged from 64,000 tons to 103,000 tons, and in 1934 the quantity dropped to 105,000 tons. See Appendix I. In contrast, the largest quantity of refined sugar distributed in the continental United States by the mainland refiners in the years immediately prior to the enactment of quota legislation was 5,356,000 tons, in 1929. That quantity was 76.9 percent of the total quantity distributed. During the depression years when total distribution declined, the quantity distributed by the mainland refiners fell to 4,020,000 tons in 1933, or 63.6 percent of the total quantity distributed. During each of the years when quotas were in effect under the Jones-Costigan Act and the Sugar Act of 1937,[33] with one exception, the mainland refiners distributed less than the quantity distributed in the pre-quota year 1929. The exception was the year 1941, preceding this country's entry into the war, when the total distribution of sugar reached the unusually high figure of 8,069,000 tons. In 1948, when quotas were again imposed after the war, they distributed 5,077,000 tons, which was 69.1 percent of the total, and under the 1949 quotas as revised on June 10, 1949, they will be able to obtain no more than approximately 4,950,000 tons, or 68.3 percent of the total, which is still below the quantity they distributed in 1929 and 1930. Appendix I.

[33] Quotas were in effect from 1935 to 1941, inclusive, except during the periods September 11, 1939 to December 31, 1939, and February 29, 1940 to October 15, 1940.

Thus, while the Puerto Rican refiners have been authorized to refine and market in the continental United States as much sugar as they marketed in their peak pre-quota year, the residual supplies of raw sugar available to the mainland refiners under the quota legislation have not been large enough to permit them to market a quantity equal to the quantity marketed by them in their peak pre-quota year.

The challenge of the respondents and of the Government of Puerto Rico is in reality directed to the wisdom of section 207(b) of the Sugar Act of 1948 rather than to the power of Congress to enact it, and their contentions should properly be addressed to Congress rather than to this Court. If the Congressional power exists, the motives for its exercise are not subject to judicial cognizance. *Hampton & Co.* v. *United States*, 276 U. S. 394; *Chicago, B. & Q. R. R. Co.* v. *McGuire*, 219 U. S. 549, 569; *Nebbia* v. *New York*, 291 U. S. 502, 537.

CONCLUSION

It is respectfully submitted that the judgment of the court below should be reversed and that the order of the Secretary of Agriculture should be affirmed.

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SEPTEMBER, 1949.

APPENDIX A

COMPARATIVE TABULATION OF PRODUCTION FOR THE CRUCIAL YEAR OF 1944 WITH REFERENCE TO THE CROP OF 1943

Factories	Tons 96° Sugar 1942-43	Tons 96° Sugar 1943-44	Percentage 96° Sugar elab'd 1944 in Relation to 1943	Percentage Change of 1944 Crop from 1943 Crop
Cambalache	42 472 04	28 091 00	67 552	−32 448
Canovanas	38 248 94	24 510 51	64 082	−35 918
Carmen	20 093 72	13 215 39	60 883	−39 117
Constancia-Toa	19 414 41	14 183 25	73 055	−26 945
Juanita	24 071 56	13 831 06	55 589	−44 411
Los Canos	20 922 67	16 850 18	80 535	−19 465
Monserrate	16 378 82	12 524 45	76 467	−23 533
Plazuela	26 297 93	19 776 00	75 200	−24 800
Rio Llano	11 677 13	9 125 41	78 148	−21 852
San Vicente	34 453 50	22 451 85	65 166	−34 834
San Jose	15 915 19	10 023 09	62 978	−37 022
Victoria	21 742 41	12 817 32	59 748	−40 252
Total	291 458 34	197 909 53	61 758	−38 242
El Ejemplo	12 323 67	5 257 90	42 665	−57 335
Fajardo	56 955 47	33 201 35	58 293	−41 707
Pasto Viejo	32 720 03	24 993 50	75 479	−24 521
Roig	27 151 97	20 690 67	76 092	−23 908
Total	129 151 14	83 813 42	64 896	−35 104
Aguirre	85 086 56	61 310 17	72 096	−27 904
Boca Chica	19 710 27	11 782 79	59 779	−40 221
Caribe	10 118 92	8 367 29	82 689	−17 311
Constancia-Ponce	7 389 06	5 011 97	67 830	−32 170
Guamani	12 387 98	10 011 40	80 835	−19 165
Guanica	116 915 96	81 732 65	69 907	−30 093
Lafayette	29 075 89	24 345 49	83 732	−16 268
Machete	22 838 93	17 260 69	75 576	−24 424
Mercedita	41 706 81	37 333 84	89 515	−10 485
Rufina	31 937 12	24 827 88	77 738	−22 262
San Francisco	6 250 13	5 584 20	89 345	−10 655
Total	383 370 19	287 568 40	75 010	−24 990
Coloso	41 626 24	31 323 07	75 248	−24 752
Igualdad	38 427 38	25 772 36	67 067	−32 933
Eureka	31 571 87	19 174 05	60 728	−39 272
Rochelaise	11 900 13	5 302 11	46 235	−53 765
Total	123 525 82	81 771 79	66 198	−33 802
Cayey	12 152 45	6 828 80	56 192	−43 808
Herminia	1 992 32	1 828 82	91 793	− 8 207
Juncos	31 441 45	15 618 40	49 674	−50 326
Pellejas	4 679 00	2 303 88	49 239	−50 761
Plata	18 889 62	15 858 81	83 995	−16 005
Santa Barbara	3 517 75	1 507 43	42 853	−57 147
Santa Juana	32 229 52	22 953 91	71 220	−28 780
Soller	6 840 19	5 558 18	81 257	−18 743
Total	111 733 30	72 458 90	64 850	−35 150
Grand Total	1 039 238 77	723 612 04	69 629	−30 371

Source: Government of Puerto Rico, Public Service Commission, Sugar Technology Division, Bulletin No. 1, Annual Synopsis of Cane Sugar Manufacturing Data, 1943 and 1944, Table XIII. The percentage changes have been computed and added to the table.

(Here follows Appendix B and C)

CROP YEAR PRODUCTION

(Short

	1937-38	1938-39	1939-40	194
Aguirre	1/ 158	90.266	101.851	94
Caribe	457	5.886	9.159	9
Central Aguirre Sugar Co.	129.615	96.152	111.010	103
Cambalache	49.405	41.082	49.518	41
Plazuela	33.174	19.676	23.940	21
Land Authority of Puerto Rico	82.579	60.758	73.294	62
Canovanas	40.950	29.401	36.508	34
Fajardo	67.563	56.315	63.432	58
Fajardo Sugar Co. of Puerto Rico	107.913	85.716	99.940	91
Central Coloso, Inc.	42.302	36.633	45.229	39
Constancia Ponce				
Corp. Azucarera Sauri & Subira	9.502	7.089	8.665	7
Constancia Toa				
Cia. Azucarera del Toa	27.517	21.120	28.677	23
Eastern Sugar Associates	119.853	83.145	101.116	93
El Ejemplo	16.896	11.896	11.859	10
Roig	35.093	25.014	28.659	29
Antonio Roig, Sucesores, S. en C.	51.899	36.820	40.518	39
Central Eureka, Inc.	10.515	18.899	25.045	24
Guamani				
Suc. de Jose Gonzales & Co., S. en C.	14.715	10.432	11.573	10
Guanica				
South Porto Rico Sugar Co. of P. R.	106.363	87.916	103.128	81
Central Igualdad, Inc.	21.863	17.350	26.623	33
Central Juanita, Inc.	23.706	23.542	28.467	20
Lafayette				
Association Azuc. Cooperativa	34.568	28.595	29.831	21
Cooperativa Azucarera Los Canos	21.183	17.331	20.732	20
Mercedita	40.385	46.135	38.769	35
Boca Chica	25.508	0	17.618	14
Sucesion de J. Serralles	65.893	46.135	56.387	49
Monserrate				
Jaime y Federico Calaf Collazo	13.805	12.407	15.055	13
Pellejas				
Jorge Lucas P. Valdivieso	2.469	4.045	5.433	6
Plata Sugar Company	16.365	16.150	19.272	17
Rio Llano				
Cia. Azuc. del Camuy, Inc.	0	6.354	8.409	10
Soller Sugar Company	7.799	6.084	7.450	8
Rochelaise				
Mayagues Sugar Co. Inc.	9.928	8.529	11.475	10
Ruñna				
Mario Mercado y Hijos	30.526	27.528	32.040	27
San Francisco				
Arturo Lluberas (Estate of) y Sobrinos	7.257	5.928	7.132	6
Central San Jose, Inc.	18.947	15.807	17.537	17
Central San Vicente, Inc.	43.875	32.667	39.398	35
Santa Barbara				
Sra. Maria del Toro Viuda de Ortiz	2.888	2.951	3.776	3
Central Victoria, Inc.	21.492	17.691	21.780	19
Sub-Total	1.054.337	834.071	995.902	912
Carmen	19.587	14.777	18.453	16
Herminia	2.515	1.979	2.305	1
Playa Grande	8.531	7.615	9.408	8

APPENDIX B

CROP YEAR PRODUCTION OF SUGAR BY PUERTO RICAN MILLS
(Short Tons, Raw Value)

	1937-38	1938-39	1939-40	1940-41	1941-42	1942-43	1943-44	1944-45	1945-46	1946-47	1947-48	Estimated 1948-49
Aguirre	122,158	90,266	101,851	94,427	108,104	108,642	79,070	94,920	85,517	108,704	96,509	118,000
Caribe	7,457	5,886	9,159	8,107	10,273	10,151	8,411	7,999	8,304			
Central Aguirre Sugar Co.	129,615	96,152	111,010	102,534	118,377	118,793	87,481	102,919	93,821	108,704	96,509	118,000
Cambalache	49,405	41,082	49,318	41,269	46,109	42,939	28,925	37,133	41,551	47,133	47,794	50,600
Plazuela	33,174	19,678	23,886	21,047	28,220	26,418	19,891	25,084	24,186	25,549	28,548	33,000
Land Authority of Puerto Rico	82,579	60,758	73,204	62,296	74,329	69,357	48,816	62,217	65,737	72,722	76,382	83,600
Canovanas	40,356	29,401	36,508	34,786	46,248	38,453	24,581	23,719	23,378	34,604		
Fajardo	67,563	56,315	63,432	56,575	68,189	57,232	33,420	45,249	52,112	62,803		
Fajardo Sugar Co. of Puerto Rico	107,913	85,716	99,940	91,361	114,437	95,685	58,001	78,968	75,490	97,413	110,123	112,000
Central Coloso, Inc.	42,302	30,633	45,229	39,517	46,604	42,030	31,632	38,664	44,850	44,901	47,877	52,500
Constancia Ponce Corp. Azucarera Sauri & Subira	9,502	7,089	8,665	7,524	9,397	7,433	5,033	8,166	8,070	8,303	10,878	11,500
Constancia Toa Cia. Azucarera del Toa	27,517	21,120	25,677	23,397	27,745	19,471	14,276	20,241	18,834	23,474	29,197	31,348
Eastern Sugar Associates	119,853	83,143	101,116	93,679	121,920	109,198	70,444	95,059	90,055	132,474	132,558	145,350
El Ejemplo	16,406	11,806	11,859	10,407	11,994	12,432	5,306	12,297	14,167	16,560		17,400
Roig	35,093	25,014	28,659	29,052	33,526	27,417	20,881	28,497	30,634	32,539		39,600
Antonio Roig, Sucesores, S. en C.	51,899	36,820	40,518	39,459	45,520	39,849	26,187	40,794	44,801	49,099	54,849	57,000
Central Eureka, Inc.	19,515	18,899	25,045	24,732	29,714	31,877	19,346	26,670	25,542	30,932	27,719	35,750
Guamani Suc. de Jose Gonzales & Co., S. en C.	14,715	10,432	11,573	10,915	14,027	12,453	10,069	7,195	8,282	12,810	9,153	10,750
Guanica South Porto Rico Sugar Co. of P. R.	106,363	87,916	103,128	81,138	112,716	118,209	82,636	105,254	82,195	05,678	96,935	108,000
Central Igualdad, Inc.	21,863	17,350	28,623	33,222	42,536	39,069	26,189	36,213	40,860	46,524	40,394	53,722
Central Juanita, Inc.	23,706	23,842	28,467	26,394	31,319	24,282	13,980	21,916	23,265	30,060	34,060	30,564
Lafayette Association Azuc. Cooperativa	34,568	28,595	29,831	31,754	34,966	29,248	24,480	27,353	31,255	38,224	34,962	40,000
Cooperativa Azucarera Los Canos	21,183	17,331	20,732	20,089	25,450	20,998	16,906	25,380	20,033	26,855	28,568	31,050
Mercedita	40,385	46,135	38,780	35,390	45,408	41,961	37,508	46,360	47,808	65,257	60,930	65,000
Boca Chica	25,508	0	17,618	14,424	19,213	20,141	12,035	15,555	11,862	0	0	
Sucesion de J. Serralles	65,893	46,135	56,387	49,823	64,621	62,102	49,543	61,915	59,760	65,257	60,939	65,000
Monserrate Jaime y Federico Calaf Collazo	13,805	12,407	15,055	13,450	14,227	16,514	12,625	16,744	17,259	17,139	21,025	24,000
Pellejas Jorge Lucas P. Valdivieso	2,469	4,043	5,433	6,281	5,335	3,619	2,311	3,830	3,678	4,982	6,153	7,130
Plata Sugar Company	16,365	16,150	19,272	17,930	23,426	19,050	13,993	23,602	23,424	29,072	34,888	41,125
Rio Llano Cia. Asuc. del Camuy, Inc.	0	6,354	8,609	10,815	13,696	11,791	9,194	13,187	14,366	16,514	14,500	16,000
Soller Sugar Company	7,799	6,684	7,450	8,803	7,890	6,883	5,602	7,507	7,330	8,978	10,668	12,500
Rochelaise Mayaguez Sugar Co. Inc.	9,928	8,529	11,475	10,169	11,471	11,950	8,819	10,098	10,797	16,829	9,530	10,000
Ruñna Mario Mercado y Hijos	30,526	27,528	32,040	27,956	37,751	32,069	24,932	32,654	26,185	28,229	25,629	34,740
San Francisco Arturo Lluberas (Estate of) y Sobrinos	7,257	5,925	7,132	6,588	8,460	6,278	5,617	6,165	6,274	6,701	6,350	7,000
Central San Jose, Inc.	18,947	15,507	17,537	17,125	18,746	15,983	10,049	15,807	12,200	18,792	19,078	21,200
Central San Vicente, Inc.	43,875	32,667	39,398	35,245	38,753	34,622	22,611	37,528	39,417	46,075	46,597	53,430
Santa Barbara Sra. Maria del Toro Viuda de Ortiz	2,888	2,951	3,776	3,772	3,898	3,534	1,515	3,054	1,903	4,753	3,385	
Central Victoria, Inc.	21,492	17,691	21,780	19,406	24,410	21,679	12,920	18,693	16,836	19,979	20,439	25,053
Sub-Total	1,054,337	834,071	995,902	912,304	1,121,741	1,024,023	713,927	949,583	913,454	1,103,273	1,108,093	1,239,312
Carmen	19,587	14,777	18,453	16,938	21,741	20,185	13,270	19,748				
Herminia	2,515	1,979	2,305	1,991	3,026	1,998	1,831	1,952	2,958	2,786		
Playa Grande	8,531	7,615	9,408	8,310	9,216							
GRAND TOTAL	1,084,970	858,442	1,026,068	939,543	1,155,724	1,046,206	729,028	971,283	916,412	1,106,059	1,108,093	1,239,312

Source: Caribbean Area Office, PMA, USDA, San Juan, Puerto Rico

APPENDIX C

PERCENTAGE OF TOTAL SUGAR CROP PRODUCED BY PUERTO RICAN MILLS
1937-38 to 1948-49

Mills	1937-38	1938-39	1939-40	1940-41	1941-42	1942-43	1943-44	1944-45	1945-46	1946-47	1947-48	Estimated 1948-49
Aguirre												
Caribe												
Central Aguirre Sugar Co.	11.946	11.201	10.819	10.913	10.243	11.355	11.066*	10.506	10.238	9.918	8.709**	9.821
Cambalache												
Plazuela												
Land Authority of Puerto Rico	7.611*	7.074	7.134	6.630	6.431	6.629	6.096	6.406**	7.173	6.635	6.893	6.746
Canovanas												
Fajardo												
Fajardo Sugar Co. of Puerto Rico	9.946	9.985*	9.740	9.724	9.902	9.146	7.956**	8.130	8.238	8.888	9.938	9.037
Central Colcos, Inc.	3.809**	4.267	4.408	4.206	4.032	4.017	4.342	3.981	4.804*	4.307	4.294	4.236
Constancia Ponce												
Corp. Azucarera Sauri & Subirá	876	826	.844	.802	.813	.711	.630**	.841	.881	.757	.982*	.928
Constancia Toa												
Cia. Azucarera del Toa	2.536	2.460	2.502	2.496	2.401	1.861**	1.958	2.084	2.055	2.142	2.548*	2.530
Eastern Sugar Associates	11.047	9.686	9.855	9.971	10.549	10.438	9.068**	9.787	9.827	12.060*	11.963	11.728
El Ejemplo												
Roig												
Antonio Roig, Sucesores, S. en C.	4.784	4.280	3.949	4.200	3.939	3.809	3.589**	4.200	4.899	4.480	4.939*	4.599
Central Eureka, Inc.	1.769**	2.302	2.441	2.632	2.571	3.047*	2.654	2.952	2.787	2.822	2.502	2.965
Guamani												
Suc. de Jose Gonzales & Co., S. en C.	1.356*	1.215	1.128	1.162	1.214	1.190	1.381	.741**	.904	1.150	.826	.867
Guanica												
South Porto Rico Sugar Co. of P. R.	9.804	10.241	10.051	8.636**	9.753	11.289	11.535*	10.837	8.909	8.729	8.748	8.715
Central Igualdad, Inc.	2.015**	2.021	2.505	3.536	3.681	3.734	3.592	3.728	4.459*	4.245	3.645	4.335
Central Juanita, Inc.	2.185	2.742	2.774	2.809	2.710	2.321	1.918**	2.256	2.532	2.742	3.076*	2.466
Lafayette												
Asociacion Azuc. Cooperativa	3.186	3.331	2.907	3.380	3.025	2.790**	3.536	2.816	3.411	3.487*	3.155	3.228
Cooperativa Azucarera Los Canos	1.953**	2.019	2.021	2.138	2.202	2.007	2.319	2.613*	2.284	2.450	2.580	2.565
Mercedita												
Boca Chica												
Sucesion de J. Serralles	6.073	5.374	5.495	5.363	5.591	5.936	6.760*	6.374	6.521	5.954	5.499	5.245**
Monserrate												
Jaime y Federico Calaf Collazo	1.272**	1.445	1.467	1.432	1.231	1.529	1.732	1.724	1.883	1.564	1.807	1.937*
Pellejas												
Jorge Lucas P. Valdivieso	.228**	.471	.530	.660*	.462	.346	.317	.374	.401	.455	.555	.575
Plata Sugar Company	1.508**	1.881	1.778	1.901	2.027	1.821	2.194	2.430	2.556	2.652	3.148	3.318*
Rio Llano												
Cia. Azuc. del Camuy, Inc.		.740**	.820	1.151	1.185*	1.127	1.261	1.358	1.568*	1.507	1.309	1.291
Soller Sugar Company	.719	.779	.726	.614**	.683	.658	.768	.773	.800	.819	.963	1.009*
Rochelaise												
Mayaguez Sugar Co. Inc.	.915	.994	1.118	1.082	.993	1.142	.767**	1.039	1.178*	.988	.860	.807
Rufina												
Mario Mercado y Hijos	2.814	3.207	3.123	2.976	3.266	3.065	3.489*	3.362	2.857	2.575	2.313**	2.803
San Francisco												
Arturo Lluberas (Estate of) y Sobrinos	.668	.690	.695	.701	.732	.600	.770*	.635	.685	.611	.573	.565**
Central San Jose, Inc.	1.746	1.807	1.709	1.823*	1.622	1.528	1.378	1.627	1.331**	1.532	1.722	1.711
Central San Vicente, Inc.	4.044	3.805	3.840	3.751	3.353	3.309	3.109**	3.864	4.301	4.294	4.205	4.311*
Santa Barbara												
Sra. Maria del Toro Viuda de Ortiz	.266	.344	.368	.401	.337	.338	.238**	.314	.218	.434*	.305	
Central Victoria, Inc.	1.981	2.061	2.123*	2.065	2.112	2.071	1.772**	1.924	1.827	1.823	1.845	2.022
Carmen	1.805	1.721**	1.798	1.803	1.881	1.929	1.820	2.033*				
Herminia	.232	.231	.225	.212	.262	.191**	.251	.201	.323*	.254		
Playa Grande	.786**	.887	.917*	.884	.797							

* Largest percentage of crop produced during any year tabulated.
** Smallest percentage of crop produced during any year tabulated.
Source: Computed from figures in Appendix B.

APPENDIX D

RAINFALL IN PUERTO RICO

Normal, 1946, and 1947 Annual Total

Place	Normal Number of years	Normal Inches	1946 Inches	1947 Inches
North				
Arecibo	48	57.9	50.8	45.6
San Juan	50	60.2	42.8	51.0
Fajardo	49	65.0	41.3	52.8
East				
Caguas	49	61.8	45.1	46.8
West				
Mayaguez	49	79.9	72.7	53.8
Average				
Above 5 Stations		65.0	54.3	50.2
South				
Aguirre	48	42.2	36.1	29.1
Ponce	49	35.9	24.0	28.8
Guanica	46	29.9	26.0	24.1
Average				
3 South Puerto Rico Stations		36.1	28.7	27.3

Source: Compiled from Climatological Data—West Indies and Caribbean Service, published monthly by the United States Weather Bureau.

APPENDIX E

PRODUCTION OF SUGAR IN PUERTO RICO— SOUTH COAST AND TOTAL ISLAND, 1930-48

Year	Production of Sugar: Total Island	Production of Sugar: South Coast	Production on So. Coast as % of Total Island	Production on South Coast as % of Total Island for Selected Periods: Period	Percentage
	(1,000 short tons, 96° degree basis)				
1930	788	323	40.99		
1931	992	407	41.03		
1932	834	423	50.72		
1933	1,114	462	41.47		
1934	781	338	43.28		
1935	926	369	39.85	1930-41	39.37
1936	996	418	41.97		
1937	1,077	365	36.68		
1938	852	307	36.03	1935-41	36.81
1939	1,019	357	35.03		
1940	932	315	33.80		
1941	1,148	397	34.58		
1942	1,039	383	36.86	1942-47	34.88
1943	724	288	39.78	1943-47	34.41
1944	964	348	36.10	1944-47	33.43
1945	909	313	34.43	1945-47	32.66
1946	1,088	360	33.09	1946-47	31.88
1947	1,108	341	30.78	1947	30.78
1948	1,274	407	31.95		

Source: 1930-45 from Association of Sugar Producers of Puerto Rico data.
1947 from Exhibit "B"—No. 52, Amended, Issued February 5, 1949, Caribbean Area Office, PMA, San Juan, Puerto Rico.
1948 from Association of Sugar Producers of Puerto Rico estimate, April 16, 1949.

APPENDIX F

PRODUCTION OF BEET SUGAR IN MICHIGAN

Year	Production of Sugar (1,000 short tons refined value)	Average Production in Specified Periods: Period	Average Production (1,000 short tons refined value)
1920	166		
1921	122		
1922	81		
1923	110	1920–25	128
1924	165		
1925	122		
1926	106	1926–31	84
1927	109	1927–31	90
1928	64	1928–31	72
1929	57	1929–31	75
1930	86	1930–31	84
1931	83	1931	83
1932	171		
1933	170		
1934	147		
1935	100		
1936	116	1932–42	147
1937	79		
1938	171		
1939	192		
1940	168		
1941	158		
1942	172		
1943	50		

Source: Crop Reporting Board Work Sheets and *Agricultural Statistics*.

APPENDIX G

PRODUCTION OF SUGAR IN LOUISIANA

Year	Production of Sugar (1,000 short tons raw value)	Average Production in Specified Periods: Period	Average Production (1,000 short tons raw value)
1909	327		
1910	350		
1911	360		
1912	157		
1913	299		
1914	248		
1915	140	1909–1922	261
1916	310		
1917	249		
1918	250		
1919	124		
1920	173		
1921	331		
1922	301	1922–1928	139
1923	165	1923–1928	109
1924	90	1924–1928	97
1925	142	1925–1928	89
1926	48	1926–1928	85
1927	72	1927–1928	104
1928	135	1928	135
1929	204		
1930	188		
1931	160		
1932	228		
1933	200		
1934	239		
1935	341		
1936	386		
1937	605		
1938	491		
1939	434	1929–1948	322
1940	235		
1941	323		
1942	600		
1943	434		
1944	369		
1945	376		
1946	331		
1947	297		
1948	397		

Source:
1909–1939—Sugar Cane for Sugar and Syrup: Acreage, Production, and Disposition, (1909–1939) By States. U.S.D.A., Agricultural Marketing Service, (Feb. 1941).
1940–1947—Agricultural Statistics, U.S.D.A.
1948—Final Manufacturing Reports of Louisiana Sugar Mills, Louisiana State P.M.A. Office, Baton Rouge, La., as published in the *Sugar Bulletin*, March 1, 1949.

APPENDIX H

MAINLAND CANE—SUGAR PRODUCTION 1930-47
(1,000 Short Tons—Raw Value)

Crop Year	Florida		Louisiana	
	Tons	Percentage Change from Preceding Year	Tons	Percentage Change from Preceding Year
1930	27		188	
1931	24		160	
1932	37		228	
1933	41		209	
1934	28	−31.7	239	+14.4
1935	42		341	
1936	51		386	
1937	57		405	
1938	92		491	
1939	70		434	
1940	97	+38.6	235	−45.9
1941	96		323	
1942	80		400	
1943	64		434	
1944	68		369	
1945	99		376	
1946	94		331	
1947	79		297	

Source: Agriculture Statistics, published annually by the United States Department of Agriculture.

APPENDIX I

SUGAR DISTRIBUTION IN CONTINENTAL U. S. AND SHIPMENTS OF PUERTO RICAN REFINED SUGAR TO THE CONTINENTAL U. S. IN YEARS PRIOR TO THE ADOPTION OF SUGAR QUOTA LEGISLATION, COMPARED WITH EXPERIENCE IN YEARS WHEN QUOTAS WERE IN EFFECT
(1,000 short tons, raw value)

Year	Distribution [1]				Puerto Rican Shipments and Entries Refined Sugar to Continental United States [2]	
	Mainland Refiners		All Others	Total		
	1,000 Tons	Percent	1,000 Tons	1,000 Tons	Fiscal Year	1,000 Tons
1929	5,356	76.9	1,608	6,964	1929–30	84
1930	5,032	75.0	1,678	6,710	1930–31	90
1931	4,592	70.0	1,969	6,561	1931–32	103
1932	4,129	66.1	2,119	6,248	1932–33	102
1933	4,020	63.6	2,296	6,316	1933–34	127
1934	4,120	64.9	2,229	6,349	1934–35	105
					calendar year	
1935	4,455	67.2	2,179	6,634	1935	123
1936	4,465	66.6	2,241	6,706	1936	118
1937	4,655	69.8	2,016	6,671	1937	122
1938	4,540	68.3	2,103	6,643	1938	123
1939	4,343	63.2	2,525	6,868	1939	139 [3]
1940	4,548	66.0	2,343	6,891	1940	171 [4]
1941	5,456	67.6	2,613	8,069	1941	121
1948	5,077	69.1	2,266	7,343	1948	122
1949 [5]	4,950	68.3	2,300	7,250	1949	126

[1] Data for 1929 to 1933 from Tariff Commission Report to the President on Sugar, No. 73, Second Series, Table 14, page 165, converted to raw basis using 107 pounds of raw sugar as equivalent to 100 pounds of refined sugar. Data for 1934 to 1941, and for 1948 to 1949, from official reports of the Sugar Branch, U. S. Department of Agriculture, converted to raw value.

[2] Fiscal year data from Annual Book of Statistics of Puerto Rico 1946-47 converted to raw value; these figures appear to include turbinado sugar. Calendar year data from R. 147 and from official reports of the Sugar Branch, United States Department of Agriculture.

[3] Quotas suspended September 11, 1939 to December 31, 1939.

[4] No quota restrictions February 29, 1940 to October 15, 1940.

[5] Estimated on basis of 1949 quotas after reallocation on June 10, 1949, of beet sugar deficit of 200,000 tons; assuming that 100,000 tons of mainland cane sugar will be distributed as direct-consumption raw sugar. The quantity of such sugar so distributed in 1948 was 97,000 tons.

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